[redacted] APPELLANT,

[redacted] AND THE
UNITED STATES OF AMERICA

[redacted] FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

FILED SEPTEMBER 30, 1944

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 485

ROSCOE A. COFFMAN, APPELLANT,

vs.

FEDERAL LABORATORIES, INC., AND THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROSCOE A. COFFMAN, Plaintiff,

vs.

FEDERAL LABORATORIES, INC., a Corporation of the State of Delaware, and BREEZE CORPORATIONS, INC., a Corporation of the State of New Jersey, Defendants

COMPLAINT

1. Plaintiff Roscoe A. Coffman is a resident and citizen of Las Vegas, State of Nevada.

2. Defendant Federal Laboratories, Inc. is a corporation organized and existing under the laws of the State of Delaware having its principal place of business in the City of Pittsburgh, Pennsylvania.

3. Defendant Breeze Corporations, Inc. is a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business in the City of Newark, New Jersey.

4. The amount involved in each of the causes of action herein set forth is in excess of $3,000.00 exclusive of interest and costs.

First Cause of Action

5. On December 8, 1932 plaintiff and defendant Federal Laboratories, Inc. entered into an agreement, a true copy of which is hereto annexed, marked Exhibit "A" and made a part hereof.

At the time of the making of the said agreement, plaintiff was the inventor and sole owner of the letters patent therein referred to. By the terms of said agreement plaintiff [fol. 2] granted to the defendant Federal Laboratories, Inc., and alternately to its successor in business, the defendant Breeze Corporations, Inc., the non-assignable and exclusive license upon the terms and conditions therein set forth, to make, use and sell devices and shells embodying the inventions, types and designs as set forth in the aforementioned patents and patent applications, as by reference to said agreement will more fully appear.

6. Paragraph 2 of said agreement provides:

"Second. Licensee shall pay to Licensor, his heirs or assigns, for the license hereby granted the sum of $5,000.00 payable as follows: for the first 200 devices, $25.00 on the sale and delivery of and payment for each device made for consumption of shells. Licensee shall also pay to Licensor, his heirs or assigns, a license fee or royalty equal to six percent (6%) of the Licensee's net selling price on all devices and parts thereof sold. The Licensee's net selling price shall not be less than sixty percent (60%) of the established retail selling price, less any discount to customers, not to exceed ten percent (10%); providing these discounts, plus commissions, shall never exceed fifty percent (50%) of Licensee's established retail selling price.

"In addition thereto, Licensee shall pay to Licensor, his heirs and assigns, on all power generating units (shells) or parts thereof, made or caused to be made and sold, a licensee fee or royalty of six percent (6%) of the Licensee's net selling price, payable after sales and payments to Licensee therefor. Licensee's net selling price shall not be less than sixty percent (60%) of the retail selling price to the consumer.

"Royalty payments in accordance herewith shall be made on or before the thirtieth day of January, the thirtieth day of April, the thirtieth day of July and the thirtieth day of October of each year or fraction thereof for the three months period ending at the close of the previous month."

7. Subsequent to the making of said agreement (Exhibit "A"), defendant Breeze Corporations, Inc. purchased all of the issued and outstanding common capital stock of defendant Federal Laboratories, Inc., and became, has been and now is the sole owner thereof and dominates and [fol. 3] controls all the business and the policies of defendant Federal Laboratories, Inc. as the sole owner of such corporation.

8. In and about the year 1937 defendant Breeze Corporations, Inc., which then and there had manufacturing facilities in the City of Newark, New Jersey, took over the manufacture in its own plant of the starters referred to in plaintiff's patents and in said agreement and the parts

therefor, while the defendant Federal Laboratories, Inc. in its plants at Pittsburgh continued to manufacture, cause to be manufactured and sold shells or cartridges for use in said starters.

9. On or about September 23, 1936, and July 3, 1937, the Federal Laboratories, Inc. and Breeze Corporations, Inc., (hereafter referred to as "American Companies"), or one of them entered into an agreement with Breeze Corporation of Great Britain Limited whereby the American Companies or one of them agreed that the English Companies or one of them should be entitled to make, use, apply and sell in the territory of Great Britain, the appliances, parts and systems in the said agreement that are particularly referred to and be entitled to use in the said territory any inventions and improvements in connection therewith.

10. All of the acts aforesaid of the American Companies and the British Companies relative to said patented articles were made without the knowledge, acquiescence or consent of this plaintiff, and plaintiff first learned of the dealings between the American Companies and British Companies about in the summer of 1939.

11. That on or about January 30, 1940, the plaintiff entered into a written agreement with Federal Laboratories, [fol. 4] Inc., a copy of which agreement is hereto annexed, marked Exhibit "B" and made a part hereof. The said contract was signed by the plaintiff upon the representations of the Federal Laboratories, Inc. and Breeze Corporations, Inc. that as a result of settlements made with the English Companies aforesaid the American Companies were to receive from the English Companies the sum of $100,000.00, or 25,000 pounds, whichever amount might be the larger at the time of receipt, which payment was to be made in full settlement of lump sum payment for accrued and future royalties under the plaintiff's patents.

12. Subsequent to January 30, 1940, to wit, on or about May 21, 1940, the plaintiff executed an agreement to Plessy Company Limited and Breeze Corporation of Great Britain Limited, a copy of which agreement is hereto annexed, marked Exhibit "C" and made a part hereof. That said agreement copy of which is marked Exhibit "C" was annexed to a Deed made in April, 1940 between Breeze Corporations, Inc., of 41 South Street, Newark, New Jersey,

and Federal Laboratories, Inc. of Pittsburgh, Pennsylvania, thereinafter called the American Company and Pleese Company Limited, whose registered office is at 1 Broad Street Place, London, E. C. 2, England, and Breeze Corporation of Great Britain Limited.

13. That the English Companies refused to pay any moneys over to the American Companies unless said American Companies would procure for them a release which was signed by the plaintiff.

14. That the American Companies, the defendant in this action, induced the signing of all agreements by the plaintiff upon the representations that the plaintiff was receiving [fol. 5] one-half of the amount which was paid by the British Companies to the American Companies for past, present and future royalties on articles covered by the plaintiff's patents.

15. That the defendants fraudulently represented to the plaintiff the amount which the said defendants were to receive from the British Companies; that instead of receiving from the British Companies the sum of $100,000 as represented by the defendants to the plaintiff, the defendants actually received the sum of $284,000 for capital payment on the Coffman Starter and royalties on the Coffman unfilled orders; that in addition to said sum the defendants also received the sum of $65,000 for Breeze shipments to England; that in addition to said sum, a lump sum of $131,000 which was classified as lump sum royalties for the future use of Breeze and Coffman products.

16. That by virtue of the acts of the defendants aforesaid and the defendants' misrepresentations to the plaintiff of the amount received by the defendants from the British Companies and the failure of the American Companies to disclose to the plaintiff the amount which the defendants received for the Coffman interests, the plaintiff suffered a financial loss in excess of $145,000. That instead of receiving $50,000 the plaintiff should have received in excess of the sum of $195,000.

17. Plaintiff prays that the defendants may be ordered, adjudged and decreed to account for all moneys that they received from the British Companies as hereinabove

charged, and be decreed to pay to the plaintiff one-half thereof together with interest and costs.

[fol. 6] Second Cause of Action

18. Plaintiff repeats the allegations contained in paragraphs 5 to 8 inclusive of the First Cause of Action with the same force and effect as though here repeated at length.

19. Plaintiff charges that after defendant Breeze Corporations, Inc. took over the manufacture of Coffman Starters and parts thereof it commenced a series of flagrant violations of plaintiff's contract, Exhibit "A". Among other things it prominently labeled each starter as "Breeze", whereas under the terms of said contract they should have been prominently labeled "Coffman" starters, but pretended to comply with said contract by placing plaintiff's name on said starters in a remote place in small inconspicuous lettering with the purpose and intent of appropriating to itself plaintiff's good will that would be established with pilots, the Army and Navy and airplane manufacturers and air lines, to the end that after the expiration of plaintiff's patents customers would purchase Breeze starters manufactured by said defendant rather than Coffman starters that might be manufactured by plaintiff, and with the further object that should plaintiff's contract with defendants be terminated the demand for Coffman starters would be less than otherwise; and by further refusing any and all cooperation with this plaintiff, refusing to consult with him or permit him to assist said defendant in seeking to overcome any manufacturing difficulties that might and did develop, and in other ways breaching provisions of said contract that were for the plaintiff's benefit. Likewise both defendants breached their contract with plaintiff in that they wrongfully deducted 25% of plaintiff's royalties; [fol. 7] failed and neglected to keep proper books and records of the Coffman starters and parts and shells made and sold under said agreement Exhibit "A", and on the contrary kept confusing and improper records of the manufacture and sale of articles under the terms of said contract and said patents and the amounts due plaintiff as royalties.

20. Plaintiff charges that defendants Breeze Corporations, Inc. and Federal Laboratories, Inc. claim that on April 28, 1937 an agreement was made between them where-

in defendant Federal Laboratories, Inc. employed defendant Breeze Corporations, Inc. to manufacture the Coffman Starter and accessories on the basis of cost plus 10%, and appointed Breeze Corporations, Inc. as exclusive sales distributor for Coffman Starters, accessories and cartridges and agreed to allow them a discount or pay them a commission of 25% from the sales price of said starters, parts and cartridges, and that said arrangement was to continue for a period of two years. Said defendants further contend that under date of April 28, 1939 they made a further agreement continuing in effect the alleged agreement of April 28, 1937 until cancelled by mutual consent upon thirty days notice to each other. Plaintiff charges that said agreements if made were made in fact between parent and subsidiary corporations without notice to or knowledge of the plaintiff and in order to take from plaintiff a part of the royalty that he was entitled to under the terms of his contract.

21. Plaintiff further charges that between about April 1, 1937 and January 1, 1943, all royalty statements were sent to him by defendnat Federal Laboratories, Inc., and that there was wrongfully deducted from the plaintiff on each royalty statement 25% of the royalties due him under his said contract.

[fol. 8] 22. Plaintiff further charges that between about April 1, 1937 and January 1, 1943 defendant Breeze Corporations, Inc. sent to defendant Federal Laboratories, Inc. 75% of all the royalties it admitted were due plaintiff from defendant Breeze Corporations, Inc., the parent company, and that defendant Federal Laboratories, Inc. thereupon sent its check for the Breeze royalties to plaintiff (less said 25% wrongfuliy deducted from plaintiff by defendant Breeze).

23. Plaintiff charges that in February 1941 he commenced Civil Action No. 1395 in the District Court of the United States for the District of New Jersey against both defendants named herein for the cause of action mentioned in the First Cause of Action hereof, and for an accounting of royalties due him under his agreement, Exhibit "A" annexed hereto, which action is at issue and will probably be reached for trial at the end of October 1944 before the United States District Court for the District of New Jersey.

Plaintiff further shows and charges that the United States Marshal for the District of New Jersey was never able to serve the said summons and complaint upon the defendant Federal Laboratories, Inc., for the reason that that corporation was not a corporation of New Jersey and was held to be not doing business therein, and that said action is proceeding against the defendant Breeze Corporations, Inc. alone.

24. Plaintiff further shows and charges that on or about February 24, 1943, the Navy Department, and on or about March 3, 1943 the War Department served on plaintiff and on two defendants notices that the rates or amounts of plaintiff's royalties under the agreement Exhibit "A" annexed, "and which payments are made by Breeze Corpo- [fol. 9] rations, Inc. in its capacity as exclusive sales agent and distributor for Federal Laboratories, Inc." were believed to be unreasonable and excessive, and directing that further payment of said royalties be stopped, and giving plaintiff an opportunity to be present in person or through his accountant and present such facts and circumstances as he desire having bearing upon the rates or amounts of royalties to be determined, fixed and specified by order pursuant to an act of Congress known as the Royalty Adjustment Act of 1942 (Public Law 768—77th Congress, 56 Stat. 1015, U. S. C. Title 35, Sec. 89-96) approved October 31, 1942.

25. Plaintiff shows and charges that with his accountant he appeared before a Royalty Adjustment Board in Washington and insisted that because of the years of study, research and work that he had devoted to his discoveries leading to the grant of his patents; the risk to his life that he ran in perfecting the powder and experimenting with powder and shells, and the money he spent for traveling and other expenses in connection with his experiments, his patents and the promotion thereof, the royalties reserved in his agreement above mentioned were fair and just, and that it would not be fair or just or lawful for the Adjustment Board to attempt to change the same. Plaintiff charges that no sworn testimony was taken before said board, to plaintiff's knowledge; that no representatives of either defendant were present at the so-called hearing before said board; that no witnesses were sworn before said board and

that he had notice of no hearings when any witnesses testified before said board. In fact plaintiff does not know whether any representatives of either defendant appeared [fol. 10] before said board or whether said board heard or considered any sworn testimony.

26. Although Section 1 of the Royalty Adjustment Act provides that "any order fixing and specifying the rates and amounts of royalties shall be issued within a reasonable time after such presentation" by the licensor, no action was taken by the said Adjustment Board until December 18, 1943, when Royalty Adjustment Order No. W-9 was issued by the War Department (a true copy of which is annexed and marked Exhibit "D"), and Royalty Adjustment Order No. N-7 (a true copy of which is annexed hereto and marked Exhibit "E") was issued by the Navy Department December 23, 1943, the first of which orders was received by the plaintiff on or about December 29, 1943.

27. Plaintiff shows and charges that on January 7, 1944 he filed in the District Court of the United States for the District of New Jersey a complaint charging that said Royalty Adjustment Orders were null and void and that the Royalty Adjustment Act of Congress aforesaid was null and void as depriving plaintiff of his property in his patents and in his said contract without due process of law; without the payment of just compensation, and that said act of Congress was void as violative of Section 1; Articles 1 and 8 of the Constitution in that they set up no standards for the guidance of the adminstrative agency and that the actions of the same were arbitrary and capricious; and that plaintiff prayed for an injunction restraining the defendant Breeze Corporations, Inc. from paying any of plaintiff's money to the Treasurer of the United States in accordance with the terms of said Royalty Adjustment Orders.

28. Upon the filing of said complaint the United States [fol. 11] District Court for the District of New Jersey summoned a three-judge court; notice was given to the Attorney General of the United States, as provided by law, the United States appeared in said action and moved to dismiss the same for lack of a justiciable controversy and because the plaintiff had an adequate remedy at law to sue for his royalties. Defendant Breeze Corporations, Inc. appeared in said action and filed answer denying that it

was indebted for any moneys to the plaintiff. Plaintiff shows and charges that the special court on March 31, 1944 filed its opinion holding with the contentions of the Attorney General that there was no justiciable controversy; the complaint was without equity since no affirmative judgment was sought against the defendants, and that the complaint was devoid of any allegations by which it might be inferred that the available legal remedies are inadequate. On April 6, 1944 said complaint was dismissed.

29. Plaintiff promptly appealed from said judgment of dismissal of his complaint to the Supreme Court of the United States, and the United States promptly filed a motion to affirm the judgment of the said special court, which motion to affirm the Supreme Court of the United States on to wit: May 22, 1944, ordered continued until hearing of the case on the merits; that said cause will not be heard by said court, as plaintiff is informed and believes, until late October or early November 1944. On May 26, 1944 plaintiff applied to Mr. Justice Owen J. Roberts for a stay pending the decision of the Supreme Court of the United States on said appeal, which application Justice Roberts said he would present to the court at a conference to be held the [fol. 12] following day; that on Monday, May 29, 1944 the Supreme Court denied said application which had been presented to Justice Roberts without assigning any reason therefor.

30. Plaintiff further shows and charges that on Tuesday, May 30, 1944 the Royalty Adjustment Board issued an order, a true copy of which is annexed hereto and marked Exhibit "F", directing defendant Breeze Corporations, Inc. to comply with the terms of Royalty Adjustment Orders Nos. W-9 and N-7 and requesting prompt attention. Plaintiff charges that there is no authority in the Royalty Adjustment Act of Congress above mentioned for the provision that is contained in each of the Royalty Adjustment Orders aforesaid requiring either defendant herein to pay plaintiff's money to the Treasurer of the United States, and that said provision of said orders is beyond the terms and provisions of the said statute and to that extent is null and void. Plaintiff fears that unless plaintiff's licensee defendant Federal Laboratories, Inc. (by whom heretofore all payments made to plaintiff have been made) is enjoined and restrained from complying with the provisions of said

Royalty Adjustment Orders Nos. W-9 and N-7 respectively, and in particular from making payment forthwith to the Treasurer of the United States of "the balance, in excess of the payments authorized by paragraph (2) hereof, (total of $50,000 in one year) of all royalties specified in the licenses or arrangements referred to in paragraph (2) hereof (the license agreement annexed marked Exhibit "A") which were due to Licensor and were unpaid on the effective date of said notice (February 24 and March 3 respectively), or since said date have or may hereafter become due to Licensor, on account of any manufacture, use, sale or other [fol. 13] disposition of said inventions for the War Department or the Navy Department heretofore occurred or hereafter occurring", plaintiff's moneys due to him from the defendants may be paid over to the Treasurer of the United States and plaintiff may not be able hereafter to recover the same. Plaintiff charges that the cause of action pretended to be given him by said Royalty Adjustment Act to sue the United States in the Court of Claims is not an adequate substitute for the rights that have accrued and are accruing to him under his contract aforesaid and are destructive of said contract; that plaintiff's licensees are in law estopped from attacking the validity of plaintiff's patents, whereas under said statute in a suit against the United States the latter is given to it by said statute all the defenses which may be made in an action for infringement of a patent.

31. Defendants have failed, neglected and refused to perform paragraph 3 of the Agreement, Exhibit "A" attached hereto, in that they have not since 1936 rendered to plaintiff statements, duly verified by their proper officers, showing sales and collections every three months of Coffman Starters, parts thereof, and cartridges or shells.

32. Plaintiff is without adequate remedy in the courts of law. He charges that irreparable damage will be suffered by him unless the defendants are enjoined and restrained from paying over his moneys to the Treasurer of the United States in accordance with the command of said Royalty Adjustment Orders and the notice of the Royalty Adjustment Board of May 30, 1944.

Plaintiff Prays Judgment as Follows:

(1) That an account may be taken as prayed for in the First Cause of Action herein and that defendants may be [fol. 14] ordered, adjuged and decreed to pay him such sums as may be determined to be due in such accounting with interest and costs.

(2) That defendants may be required to account as prayed for in the Second Cause of Action for all royalties due plaintiff under the terms of his agreement (Exhibit "A" annexed to the complaint) for the manufacture, use and sale of Coffman Starters, parts therefor, and cartridges or shells, and that final judgment may be given to the plaintiff for all amounts found to be due him for such royalties with interest from the date that each lot of royalties become due and costs.

(3) That a temporary injunction may issue upon the filing of this complaint and a final injunction after due hearing, enjoining and restraining the defendants and each of them from in any way complying with the terms of Royalty Adjustment Orders designated as Nos. W-9 and X-7, and especially from paying over to the Treasurer of the United States the royalties that were due plaintiff on the date said orders were issued, and further from paying to the Treasurer of the United States such royalties as have accrued and are continuing to accrue to plaintiff from and after the date of said orders.

(4) That a special three-judge court may be summoned and that the Attorney General of the United States may be notified of a hearing on this bill, all as required by the act of Congress of August 24, 1937, U. S. C. Title 28, Sec. 380(a).

(5) That contract Exhibit "A" annexed hereto may be decreed to be terminated because of its violation by defendants.

[fol. 15] (6) And that plaintiff may have such other and further relief in the premises as may be equitable and just.

Third Cause of Action

33. Plaintiff repeats the allegations of paragraphs 5, 6, 7 and 8 of the First Cause of Action and paragraph 23 of

the Second Cause of Action with the same force and effect as though here repeated at length.

33. Plaintiff alleges that pursuant to an order of the United States District Court for the District of New Jersey in the cause of action hereinabove mentioned, Chambellan, Berger & Welti, certified public accountants, have made an examination of the books and records of the defendant Breeze Corporations, Inc., to determine the net sales made by defendant Breeze Corporations, Inc. of Coffman Starters, parts therefor and cartridges in the years 1937 to 1943 inclusive, and likewise said firm made an examination late in the year 1943 of the books and records of defendant Federal Laboratories, Inc. to determine the net sales made by said defendant of Coffman Starters, parts therefor, and cartridges from 1937 to 1943 inclusive. Annexed hereto and marked Exhibit "G" is a statement of sales of Coffman Starters, parts therefor and cartridges made by defendant Breeze Corporations, Inc. and defendant Federal Laboratories, Inc. for the years 1937 to 1943 as determined by the said firm of Chambellan, Berger & Welti from the examination of the books, records and papers of the two defendants, which statement is hereby made a part hereof as though here repeated at length.

34. Plaintiff charges that there was due to the plaintiff from both defendants to December 31, 1943, royalties pur- [fol. 16] suant to plaintiff's contract Exhibit "A" hereto annexed, the sum of $371,625.96, together with large sums for interest, of which said total sum $301,452.53 was due plaintiff on sales of starters, parts therefor and cartridges made by defendant Breeze Corporations, Inc., and $70,173.43 was due plaintiff from the sale of starters, cartridges and parts made by defendant Federal Laboratories, Inc., all to and including December 31, 1943.

35. Plaintiff demands judgment against said defendants for the sum of $371,625.96, with interest and costs of suit to be taxed.

Smith, Buchanan & Ingersoll, Attorneys for Plaintiff, P. O. Address: Union Trust Building, Pittsburgh, Pennsylvania.

James D. Carpenter, Jr., (of the New Jersey Bar), William H. Eckert, Of Counsel.

[fol. 17] AFFIDAVIT OF JOHN ALLEN APORTA

John Allen Aporta, of full age, being duly sworn, according to law, upon his oath deposes and says:

I live at 65 Seaman Avenue, New York, N. Y.

I am a graduate of the School of Commerce, Accounts and Finance of New York University, and I am in the employ of Chambellan, Berger & Welti, Certified Public Accountants, of 92 Liberty Street, New York, N. Y., accountants appointed by Honorable William F. Smith, Judge of the United States District Court for the District of New Jersey, as plaintiff's representatives to inspect the sales books and ledgers, sales invoices, contract registers and sale contracts, and all records showing quantities of Coffman starters and all devices manufactured under any Coffman patent by the defendant Breeze Corporations, Inc., after December 8, 1932.

The copy of contract between the plaintiff and defendants of December 8, 1932 (Exhibit A annexed to the complaint) is a true copy of one of the originals that I have seen.

I worked on the books, records and papers of defendant Breeze Corporations, Inc., at Newark, from August 4, 1943, to November 20, 1943. I went to Pittsburgh and arrived there November 22, 1943, and commenced an examination of the books, records and papers of defendant Federal Laboratories, Inc., and worked there until December 9, 1943, with one assistant. Thereafter I returned to Newark and worked on the books, records and papers of the defendant Breeze Corporations, Inc., from December 9, [fol. 18] 1943, and have been working there continuously to the present time.

I learned in the course of my investigation above mentioned that defendant Breeze Corporations, Inc., owns all of the common capital stock of defendant Federal Laboratories, Inc., and substantially all of its preferred stock. Annexed hereto and marked Exhibit G is a statement that I made of the estimated summary of sales and royalties subject to final adjustment due plaintiff Roscoe A. Coffman from defendant Breeze Corporations, Inc., and from defendant Federal Laboratories, Inc., for the calendar years 1937 to 1943, inclusive. The total amount that I found from the books and records of the two defendants to be due and owing to the plaintiff from the two corporations defendant at December 31, 1943, was $371,625.96, of

which $301,452.53 is the balance of royalties, after payments on account, due and owing on sales of Coffman starters, starters breeches, parts and cartridges by defendant Breeze Corporations, Inc., for the years 1937 to 1943, inclusive, and the sum of $70,173.43 is due the plaintiff from defendant Federal Laboratories, Inc., on sales of starters breeches, parts and cartridges or shells made by defendant Federal Laboratories, Inc., for the years 1937 to 1943, inclusive. This statement does not mention interest which is due Mr. Coffman on royalties that should have been paid him quarterly under the terms of his contract.

Also annexed to the bill of complaint herein are true copies of royalty adjustment orders Nos. W-11 and N-7 that were served on both the defendants and Mr. Coffman.

I have been informed as recently as June 13, 1944, by one of the officers of the defendant Breeze Corporations, [fol. 19] Inc., that payment has not yet been made of Mr. Coffman's royalties, to the Treasurer of the United States by defendant Breeze Corporations, Inc.

Heretofore all payments of royalties on Coffman starters, parts and shells manufactured and sold by defendant Breeze Corporations, Inc., that have been made to Mr. Coffman have been paid to him not by Breeze Corporations, Inc., directly but by their transmitting the money to Federal Laboratories, Inc., and Federal Laboratories, Inc., has sent its checks to Mr. Coffman. I have examined all statements of such royalties that were remitted by defendant Federal Laboratories, Inc., to Mr. Coffman with the royalty checks. My examination of the books, records and papers of defendant Breeze Corporations, Inc., establishes to my satisfaction that Breeze Corporation, Inc., has not accounted to Mr. Coffman for royalties on all starters, parts and cartridges sold. None of the statements of royalties that were sent by the defendants to Coffman was under oath as required by paragraph Third of the agreement Exhibit A. My examination further disclosed that defendants did not keep full, accurate and complete books of account respecting the manufacture and sale of Coffman starters, parts therefor, and cartridges, as said agreement provided.

(John Allen Aporta.)

Subscribed and sworn to this — day of June, 1944, before me. —— ——, a Notary Public of New Jersey.

[fol. 20] AFFIDAVIT OF SAMUEL M. COOMBS, JR.

SAMUEL M. COOMBS, JR., of full age, being duly sworn, on his oath, according to law, deposes and says:

I am an attorney and counsellor-at-law of the State of New Jersey, am a member of the firm of Carpenter, Gilmour & Dwyer, attorneys for and of counsel with Roscoe A. Coffman in all of his litigation to recover royalties due him under his contract Exhibit A annexed to the complaint, and have read the foregoing bill of complaint, know the contents thereof and the matters and things therein contained are true as I verily believe.

The statements Exhibit G annexed to the complaint is a statement of royalties found to be due plaintiff from both defendants by Mr. Aporta in his examination. The statement annexed is the statement made by Mr. Aporta and not copied.

The allegations in the bill of complaint, second cause of action, respecting the action brought by the plaintiff in the United States District Court for the District of New Jersey, the decision thereof, and the appeal therefrom, are true to my own knowledge.

I fear that unless the defendants are restrained from complying with the terms of royalty adjustment orders W-11 and W-7, true copies of which are annexed to the complaint, and the letter addressed to defendant Breeze Cor-
[fol. 21] porations, Inc., of May 30, 1944, a copy of which was given to my firm by counsel for defendant Breeze Corporations, Inc., the defendants may pay the amounts due the plaintiff to the Treasurer of the United States in compliance with the terms of said orders before plaintiff can secure a final judgment and collect from the defendants, and, in that event, I fear that they may plead payment to the United States in compliance with said orders or they may plead that said moneys due plaintiff were taken by condemnation or they were confiscated by the Government pursuant to the Royalty Adjustment Act of 1942. I fear that unless the defendants are restrained by order or degree of this Court from complying with the terms of said orders, plaintiff's rights under his patents and his contract of December 8, 1932, with the defendants,

may be forever lost and that irreparable damage will be suffered by the plaintiff.

Samuel M. Coombs, Jr.

Subscribed and sworn to before me this —— day of June, 1944. —— ——, a Notary Public of New Jersey.

[fol. 22] EXHIBIT "A" TO COMPLAINT

Agreement

This Agreement, made this 8th day of December, 1932, between Roscoe A. Coffman, of Pittsburgh, Allegheny County, Pennsylvania, hereinafter called the Licensor, party of the first part, and Federal Laboratories, Inc., a corporation of the State of Delaware, having its principal place of business in Pittsburgh, Pennsylvania, hereinafter called the Licensee, party of the second part.

Whereas, Licensor is the sole owner of the United States Patent No. 1776228, dated September 16, 1930, French Patent No. 702133, dated August 18, 1930, Italian Patent No. 295015, dated August 18, 1930, Canadian Patent No. 324031, dated July 12, 1932, British Empire Patent No. 355022, dated August 13, 1930, German Patent Application No. 77, 30, and United States Patent Applications No. 585594, filed January 8, 1932, No. 581032, filed December 14, 1931, No. 586057, filed January 11, 1932, No. 595403, filed February 26, 1932, No. 595924, filed February 29, 1932, No. 388870, filed August 28, 1929 and No. 536389, filed May 11, 1931, all relative to improvements in starting motors and shells for use therewith; and covenants that the title thereto is unencumbered and he is fully and completely free and able to contract with reference thereto, as hereinafter set forth, and

Whereas, Licensor is willing to grant and Licensee is desirous of obtaining a non-assignable and exclusive license to manufacture, use and sell devices and shells for same as set forth in the aforementioned patents and applications.

Now, Therefore, for and in consideration of the sum [fol. 23] of One Dollar ($1.00) paid by each of the parties to the other, receipt whereof is hereby acknowledged, and in further consideration of the faithful per-

formance of the covenants and conditions hereinafter recited, the parties hereto have agreed as follows:

First: Licensor hereby grants to Licensee, and alternately to its successor in business, which is presently expected to be Federal Ordnance and Engineering Company, upon the terms and conditions herein set forth, a non-assignable and exclusively license to make, use and sell devices and shells embodying the inventions, types and designs as set forth in the aforementioned patents and patent applications. The license hereby granted, unless sooner terminated as hereinafter provided, shall be for the full term of the letters patent last issued on said applications, or any of them, or any reissues, continuations, divisions, renewals, or extensions thereof.

Second: Licensee shall pay to Licensor, his heirs or assigns, for the license hereby granted the sum of $5,000.00 payable as follows: for the first 200 devices, $25.00 on the sale and delivery of and payment for each device made for consumption of shells. Licensee shall also pay to Licensor, his heirs or assigns, a license fee or royalty equal to six percent (6%) of the Licensee's net selling price on all devices and parts thereof sold. The Licensee's net selling price shall not be less than sixty percent (60%) of the established retail selling price, less any discount to customers, not to exceed ten percent (10%); providing these discounts, plus commissions, shall never exceed fifty percent (50%) of Licensee's established retail selling price.

In addition thereto, Licensee shall pay to Licensor, his heirs and assigns, on all power generating units (shells) [fol. 24] or parts thereof, made or caused to be made and sold, a license fee or royalty of six percent (6%) of the Licensee's net selling price, payable after sales and payments to Licensee therefor. Licensee's net selling price shall not be less than sixty percent (60%) of the retail selling price to the consumer.

If Licensee, in its sole and uncontrolled discretion, shall deem it advisable to market said devices or any of them on a lease plan, rather than on an exclusively cash payment plan, then on devices so rented or leased and paid for, royalty shall be paid for at the afore-recited rates as rentals are paid after shipment, providing full royalty payment shall be made within one year based upon the net

retail price of the respective device if sold for cash, and no royalty shall be payable on carrying charges, finance services, insurance or any other element of the rental due to the use of said deferred payment or leasing plan.

Royalty payments in accordance herewith shall be made on or before the thirtieth day of January, the thirtieth day of April, the thirtieth day of July and the thirtieth day of October of each year or fraction thereof for the three months period ending at the close of the previous month.

Third: Licensee shall render statements, duly verified by its proper officers at each of the times stated for payment, showing its sales and collections for the previous three months and shall keep full, accurate and complete books of account respecting the said business; and Licensor, or his duly authorized representative, shall have the right of inspecting or examining said books of Licensee at all reasonable times during business hours for the purpose of verifying said quarterly statements and determining the correctness thereof.

[fol. 25] Fourth: Licensee hereby covenants and agrees that, during the life of this agreement it will give its best efforts diligently and continually to manufacture, sell and market, or cause to be manufactured, sold and marketed devices and shells under this license; and will exert its best efforts to create a demand therefor and to increase and extend its business; and to supply the demand for said devices and shells.

Licensee further agrees that during the life of this agreement it will not engage in the manufacture or sale of any other devices that shall directly compete with the products herein licensed. And, during the continuance of this agreement, Licensor shall not engage, apart from the Licensee, in the manufacture or sale of airplane engine starters or any other device or article licensed hereunder; nor shall he grant any license therefor to any person or persons other than the Licensee, unless Licensee has failed or refused for thirty (30) days to authorize patent application for the given device in question and make it subject to this license agreement.

Fifth: Unless sooner terminated as herein provided, the license hereby granted to Licensee shall continue during the entire life of the patents hereinbefore recited and all pat-

ents granted or to be granted on patent applications aforementioned; or any reissues, continuations, divisions, renewals, or extensions thereof as before set forth, but in no event or by process of law, shall this license agreement be construed to be an assignment to said Licensee of any of said patents or applications or any part of same set forth herein or on any future applications or patents secured by the Licensor. This document is merely a license agreement and in event of termination or cancellation [fol. 26] thereof for any reason whatsoever, the rights and titles to any and all patents or patent applications now held, or to be applied for by Licensor in the future as set forth in this agreement, and the manufacturing and sales rights given under the terms of this agreement shall automatically revert to said Licensor as his sole property. Licensor is hereby given an option, upon sixty (60) days written notice immediately given to Licensee upon cancellation, to purchase from Licensee at its manufacturing costs, such materials, devices and/or parts as it may have on hand at that time. In the event Licensor does not exercise his option to purchase, Licensee shall have the right to sell the devices and materials then on hand, providing that royalties shall be paid thereon at the rates provided herein. In event of cancellation or attempted cancellation by Licensor, Licensee shall have authority and license to continue the manufacture and sale of shells and repair parts and supplies only direct to customers who shall have purchased from Licensee any of the devices herein licensed and contemplated; said shells to be consumed by the customer and in no event shall said shells be sold by Licensee for resale to others. Provided, however, that royalties shall be paid thereon at the rates provided herein.

Sixth: Licensor shall promptly disclose to Licensee any improvements made by him relative to devices and shells of the character, principle, type and/or design as set forth in the aforementioned patents and patent applications. Likewise, Licensee shall promptly disclose to Licensor any improvements made by it or any of its employes on any parts of the devices or systems or shell developments and Licensor shall be privileged to take part in any and all laboratory or other experimental work with relation to said devices or shells and said Licensor shall be kept reliably [fol. 27] informed at all times of the progress of such de-

velopments and experimental work, it being the intent hereof for Licensor and Licensee to cooperate, one with the other, in the further development and furtherance of the inventions and patents covered by this agreement.

On all patentable improvements made by either the Licensor or by or under the direction of the Licensee or by its employees, said Licensor shall, if requested by Licensee, without the payment to him of any additional compensation, execute, where lawful for him so to do, the necessary papers for the filing of application for letters patent and obtaining patents thereon in any and all countries elected by the Licensee. Licensee shall, at its own cost and expense, pay for any and all such applications for patents, both in the United States and foreign countries applied for in connection with said devices as set forth herein and covered by this agreement, and filed by the Licensor with the approval of the Licensee. Licensee shall pay any and all costs and expenses necessary and incident to the maintaining in full force and effect all foreign patents granted on such applications, together with all foreign patents now issued and in full force and effect, provided, however, if Licensee does not wish to so maintain any specific foreign patent it may decline to pay the expense incident to the maintaining thereof and release said patent from this agreement of license; providing Licensee shall decline not later than ninety days prior to the final date for action necessary to keep said patent in full force and effect.

The selection of patent attorneys for use in connection with the filing and preparation of patent applications under the terms of this agreement, shall be vested in the Licensor; provided, however, the fees and charges of said attorneys [fol. 28] shall be reasonable in Licensee's opinion. Licensor shall have the right to select attorneys for use with Licensee's attorneys in any prosecution or defense of infringement suits; provided, however, expense of his attorneys for this purpose is borne by Licensor.

All said patents to be applied for by Licensor or by Licensee or any of its employes shall become a part of the license hereunder and royalties shall be paid thereon at the rates provided herein. However, in event Licensee does not elect to take out and pay for patents on any said improvements, after having been given by Licensor a thirty days notice in writing of his intentions to apply for a patent on said improvement, then said Licensor may apply for

said improvement patent or patents at his own expense; and said Licensee shall not be entitled to use said improvements or devices as set forth in said patent application or applications until Licensor is reimbursed for all moneys expended by him in connection with obtaining such patents.

Seventh: Licensee, at its own cost and expense shall defend any and all suits which may be brought either against it or the Licensor or any of the Licensee's customers by reason of the manufacture, use or sale of devices of the character herein contemplated and shall, at its own cost and expense diligently prosecute any and all suits which may be required against third persons or entities by reason of infringing acts of such parties. The provisions of this paragraph shall be effective both as to foreign and American rights, applications and patents. Without payment to him of any additional compensation, the said Licensor covenants and agrees to execute, at the expense of the Licensee, any and all papers which may be found necessary or desirable in any suit or suits brought under and pursuant to [fol. 29] this agreement, and the said Licensor further agrees that he will testify in any interference or litigation whenever requested to do so by said Licensee, without remuneration for service, but all necessary expenses incident to travel shall be borne by said Licensee.

Without payment to him of any consideration other than the royalties herein recited, Licensor covenants and agrees with Licensee that, during the continuance of this agreement he will, at the expense of Licensee, execute, or cause to be executed, any and all licenses or agreements which may be required to vest in the Licensee or its successor in business, which is presently expected to carry the name of Federal Ordnance and Engineering Company, an exclusive and non-assignable license under any and all inventions, applications or patents which Licensor has taken and may take out in connection with or relating to airplane engine starters or any of the devices and products to which this agreement applies.

It is understood and agreed that if, in any suits involving any of the letters patent or applications under and pursuant to which the exclusive right and license herein has been granted, charging infringement thereof, any of said letters patent or applications should be held to be invalid by the final judgment of a Court of competent jurisdiction, or in

the event that the Patent Office should refuse to grant patents on said applications, or such a court decision should so limit the effect of said applications and/or patents as to make possible for competition to manufacture or sell starters, devices and/or shells embodying the inventions of said applications and/or patents, and in the event a competitor shall so manufacture and sell any of the herein mentioned products to the detriment of Licensee, then and [fol. 30] in such event the royalty and compensation herein agreed to be paid for said patent and/or application under this agreement shall thereafter cease and determine, at the option of Licensee and thirty days written notice to the Licensor of the exercise of said option.

Eighth: Failure of the Licensee to perform the terms and agreements of this contract by it to be performed, shall be deemed a breach thereof, and upon failure of the Licensee to cure the said breach after Licensor shall have given to Licensee thirty (30) days written notice; or in the event the royalties, or the combined royalties and full time salary, if any, from Licensee shall amount to less than $5,000.00 per year, after the first year, Licensor shall have the right to cancel this agreement upon thirty (30) days written notice to the Licensee. Upon such cancellation or other termination hereof, the Licensee covenants to make, execute and deliver to Licensor any and all proper instruments to revest him with full and complete title and right of, in and to all said patents and applications and all sub-licenses lawfully granted hereunder without any further right or claim to any thereof on the part of Licensee.

Ninth: On all applications for foreign patents filed or granted as herein contemplated, Licensee shall have the right to grant sub-licenses for the manufacture, use or sale only in the country or countries respectively in which the Licensor has secured patents or filed applications for patents as provided for elsewhere herein. As to any sub-license granted in accordance herewith in any countries foreign to the United States the cash payments and royalty payments received therefrom shall be divided one-half to Licensor and one-half to Licensee, and Licensor herein shall be entitled to no other compensation thereon. On any [fol. 31] foreign license executed by Licensee a royalty of

not less than six per cent (6%) on net selling price shall be provided, unless otherwise agreed to in writing by Licensor. Net selling price as herein defined.

Tenth: In the event of lawful adjudication of Licensee as a bankrupt or on the appointment of a permanent receiver for the Licensee by a Court of competent jurisdiction or insolvency of the Licensee, or general assignment for benefit of creditors by Licensee, this agreement and the License hereby granted shall cease and determine at the option of Licensor upon written notice to Licensee or its legal representatives.

Eleventh: The devices and shells or power generating units licensed hereunder shall be marketed under the name of "Coffman" and shall be advertised and labeled as such. Each device and each shell container shall be marked with a permanent label or name-plate showing in legible letters the name "Coffman" and also be inscribed with "Licensed under Patent Nos. —— —— and Patents Pending".

Twelfth: Notices in accordance with this license agreement may be given by either party to the other by registered mail, properly addressed and mailed to the address last furnished by the addressee to the other party.

Thirteenth: Licensee shall purchase all loaded shells from Atlas Powder Company of Wilmington, Delaware, if and providing that the price, delivery and quality of such materials are equal to or better than price, delivery and quality of materials obtainable otherwise and elsewhere.

Fourteenth: This agreement shall not be construed as giving shop rights or any other claims to Licensee on inventions or patents that shall hereafter be developed by Licensor which are not directly related to the patents and inventions herein enumerated.

[fol. 32] Fifteenth: The aforementioned successor in business to Licensee, which is presently expected to be Federal Ordnance and Engineering Company, if it dissolves Licensee, shall endorse hereon its full acceptance of all the terms, covenants and provision hereof and shall be deemed the sole Licensee herein, without any right whatsoever to assign this license or grant sub-licenses except as hereinbefore provided.

Sixteenth: Except as herein otherwise provided, the license hereby granted to Licensee shall be non-assignable, either by the act of the Licensee or by operation of Law, without the approval of Licensor in writing first had and obtained.

In witness whereof this agreement has been executed in duplicate the day and year first above written, each copy to be taken as an original for all purposes.

Roscoe A. Coffman; Federal Laboratories, Inc., by John S. Young, President. (Seal.)

Witness: G. Oleeadick.

Attest: R. B. Reynolds, Secretary.

[fol. 33] EXHIBIT "B" TO COMPLAINT

Supplemental Agreement

For values mutually received, the parties hereto agree that a certain license contract dated December 8th, 1932, between Roscoe A. Coffman and Federal Laboratories, Inc. is hereby amended as follows:

1. In lieu of accrued and continued royalties Coffman agrees to accept a lump sum payment for the exclusive right under his patents in the United Kingdom, specifically excepting Canada.

2. In lieu of royalties for a con-exclusive sub-license to be issued to either Plessey Co. Ltd. or Breeze Corporation of Great Britain, Ltd., for countries on the continent of Europe, Coffman agrees to accept a lump sum payment. In the event sub-licenses are issued to others than Plessey or Breeze, royalties or other proceeds from such other sub-licenses shall be divided as provided in the existing contract between Federal and Coffman, dated December 8, 1932.

3. The lump sum payments referred to in Paragraphs 1 and 2 hereof shall aggregate Fifty Thousand Dollars ($50,000.00) or one-half of Twenty-Five Thousand Pounds (£25,000) whichever may be the larger amount at the time that such is received by Federal Laboratories, Inc. and Federal Agrees to pay said lump sum payments to Coffman upon receipt of the same by Federal.

4. It is mutually agreed that unless the payments referred to in paragraph 3 hereof are paid by Federal to Coffman within six weeks of the date hereof, Coffman shall have the option of withdrawing and cancelling this agreement to accept a lump sum payment, said option must be exercised in writing by registered mail to Federal.

[fols. 34-36] In witness whereof, the parties have hereunto set their hands and seals the 30th day of January, 1940.

Roscoe A. Coffman, Federal Laboratories, Inc., by Robert B. Reynolds, President.

Attest: Harry E. Rau, Secretary.

[fol. 37] EXHIBIT "C" TO COMPLAINT

Know all men by these presents that

Whereas, Breeze Corporations, Incorporated, of 41 South 6th Street, Newark, New Jersey, U. S. A., and Federal Laboratories, Inc., of Pittsburgh, Pennsylvania, U. S. A. (hereinafter called the "American Companies") of the one part, and The Plessey Company, Limited, whose registered office is at #1 Broad Street Place, London, E. C. 2, England, and Breeze Corporation of Great Britain, Limited, whose registered office is at #54 Vicarage Lane, Ilford, County of Essex, England, (hereinafter called the "English Companies") of the other part, are about to enter into a certain deed, whereby the English Companies are to pay to the American Companies the sum of Three Hundred Eighty-Four Thousand ($384,000.00) Dollars, for certain patent rights in the territories more specifically defined in said deed in connection with certain patents more specifically enumerated in two certain schedules attached to said deed, designated respectively "the first schedule" and "the second schedule" and

Whereas, the English Companies have refused to execute and deliver said deed and pay the consideration therein provided to the American Companies unless the undersigned shall concur in all the terms, covenants and conditions in said deed contained, as if the undersigned were a party thereto and had joined in the execution thereof, and conveyed whatever right, title and interest the undersigned

might have in and to a full and exclusive prepaid license without the payment of any past due or future royalties in and to any and all of the patents enumerated in said schedules, to the English Companies, and

Whereas, the undersigned is the record owner of various patents set forth in said schedules relating to starter for [fol. 38] internal combustion engines, and especially the engines of aeroplanes which patented devices are familiarly known as Coffman Engine Starters and Cartridges,

Now, Therefore, I, Roscoe A. Coffman, presently residing at Vicksburg, in the State of Arizona, United States of America, in consideration of One ($1.00) Dollar, lawful money of the United States to me in hand paid, and other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to enable the said deed to be executed and delivered and the consideration therein provided to be paid by the English Companies to the American Companies, do hereby certify as follows:

1. I concur in, ratify and approve the execution and delivery of the aforesaid deed by the respective American Companies and the respective English Companies, as fully as if I was a party thereto.

2. I hereby transfer and convey unto the English Companies and each of them, a full and exclusive prepaid license, without the payment of any past due or future royalties in and to any and all of the patents owned by me and described in the schedules of the aforementioned deed for the territories therein defined.

3. I hereby authorize and request the English Companies to pay over to the American Companies the said sum of Three Hundred Eighty-Four Thousand ($384,000.00) Dollars.

4. I hereby certify that I have no further or future claims of any kind or description against the English Companies in connection with the prepaid license hereinbefore mentioned, excepting as hereinafter set forth in Paragraph designated "6" herein, relative to patent maintenance on my patents by the English Companies.

[fol. 39] 5. I represent that the present license to the American Companies, dated December 8th, 1932, affecting my pat-

ents, as set forth in said schedules, is now in full force and effect and the American Companies have full authority to enter into the aforesaid Deed or Contract and I know of no adverse claim of title to any of the Licenses, rights or patents in the territories mentioned in said Deed, and I will, at the request of the English Companies or either of them and at their expense, do anything that may be necessary to effectuate and defend any of the rights, benefits and interests which are assigned to the English Companies or either of them by said Deed in connection with my patents, provided that I am compensated in cash for my services and for all my expenses in connection therewith.

6. In consideration of the execution of said Deed aforesaid by the English Companies and the payment by them or either of them of the consideration therein named, to wit, Three Hundred Eighty-four Thousand ($384,000) Dollars to the American Companies jointly, I hereby remise, release and forever discharge and do for my heirs, executors, administrators and assigns, release, and forever discharge the said The Plessey Company, Limited and Breeze Corporation of Great Britain, Limited, their successors and assigns of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, royalties due or to become due, claims and demands whatsoever in law or in equity, which, against The Plessey Company, Limited and Breeze Corporation of Great Britain, Limited, I ever had, now have or which I, my heirs, executors, [fol. 40] administrators, or assigns can or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents. This release shall be conditional upon the English Companies or either of them paying all charges, fees, taxes and dues necessary to keep and maintain all of the patents mentioned in said schedules and belonging to me, in full force and effect for the full duration and life of each of said patents and for any renewals, extensions or reissues thereof.

In Witness Whereof, I have hereunto set my hand and seal this 21st day of May, 1940.

Roscoe A. Coffman (L. S.)

UNITED STATES OF AMERICA,
State of New York,
City of New York,
County of New York, ss.:

On the 21st day of May, 1940, before me personally came Roscoe A. Coffman, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

[fol. 41] Schedule C

THIS DEED is made the day of April, 1940, between BREEZE CORPORATIONS, INCORPORATED of 41 South Sixth Street, Newark, New Jersey, U. S. A., and FEDERAL LABORATORIES, INCORPORATED of Pittsburgh, U. S. A. (hereinafter called "the American Companies") of the one part and THE PLESSEY COMPANY LIMITED, whose registered office is at 1 Broad Street Place, London, E. C. 2, and BREEZE CORPORATION OF GREAT BRITAIN LIMITED, whose registered office is at 54 Vicarage Lane Ilford, in the County of Essex (hereinafter called "the English Companies") of the other part,

WHEREAS:—

(1) By two several Agreements dated respectively the 23rd September 1936 and the 3rd July 1937 the American Companies or one of them agreed that the English Companies or one of them should be entitled to make, use, apply, and sell in the territory therein defined the appliances, products and systems in the said Agreements more particularly referred to and be entitled to use in the said territory the inventions and/or patents in connections therewith and have the rights and obligations set out in the said Agreements.

(2) It has been mutually agreed between the parties that as from the date hereof the said Agreements and all arrangements in connection therewith shall be cancelled and the terms hereinafter set out substituted for same.

NOW THIS DEED WITNESSETH as follows:—

1. In consideration of the payment mentioned in clause 9 hereof, the American Companies and each of them hereby grant to and agree to vest in the English Companies (or

either of them as the English Companies may appoint) the exclusive right to make, use, exercise, apply and sell in Great Britain and Northern Ireland, the Isle of Man, India, Egypt, Iraq, the Sudan and any of His British Majesty's Dominions (except Canada) Colonies, Protectorates, Protected or Mandated Territories, as they presently exist, (all of which places are hereinafter collectively called "the Territories") the appliances, products and systems, the subject matter of the said Agreements and which are set out in the First Schedule hereto and (except as reserved in the provisions of clause 4 hereof) all improvements thereof or inventions or processes useful in connection therewith already communicated to the English Companies, or either of them, by the date of this Agreement (all of which appliances, products, systems, improvements, inventions and processes so communicated are hereinafter collectively called "the said Items") and for the purpose of ensuring to the English Companies the benefit of the above paragraph here of the American Companies will in particular—

(a) Forthwith assign to the English Companies all rights, benefits and interests owned, exercised, enjoyed or controlled by the American Companies, or either of them for any of the territories (except Canada) in all inventions, patents, designs and trademarks now subsisting in reference or applicable to the said items or any of them and which only include the patents and patent applications set out in the Second Schedule hereto. The American Companies and each of them hereby warrant that there are not outstanding licenses in the Territories (excepting Canada) based upon any of the patents which are the subject of this [fol. 42] agreement and further warrant and guarantee that the patents and patent applications set out in the Second Schedule is a full and complete and authentic list of all patents and patent applications owned or controlled by Breeze Corporations, Inc. or licensed to it in said Territories, (excepting Canada) and also a full and complete list of all patents and patent applications owned and/or controlled by Federal Laboratories, Inc. or licensed to it in said Territories (excepting Canada) relating in any manner to starters for internal combustion engines and especially the engines of airplanes which devices are familiarly known as the Coffman engine starters and cartridges. In the event that there are presently any pending United States patents

or patent applications of which there is no counterpart in the Territories (excepting Canada) the American Companies will disclose the subject matter of such patents or patent applications upon request and the same shall be covered by this Agreement. The American Companies and each of them further warrant their full legal title to each, every and all of the patents and patent applications set out in the Second Schedule hereto and further guarantee that their title to said patents and patent applications as herein listed in the Second Schedule is free and clear of any lien, charge, grant, license or encumbrances, legal or equitable, or any other kind or description and the American Companies and each of them agree to indemnify the English Companies and each of them in respect to such title.

(b) In the case of any of the territories (excepting Canada) for which any rights, benefits or interest in respect of any of the said inventions, patents, designs or trade marks are owned, exercised, enjoyed or controlled by the American Companies or either of them merely by virtue of a license or licenses (exclusive or non-exclusive) or other Agreement or Agreements, forthwith grant, assign or transfer (if and so far as permitted by the terms of the same) all such rights, benefits and interests to the English Companies or either of them as the English Companies may appoint either by way of sub-license or otherwise as the English Companies shall reasonably require and shall for such purpose obtain the consent or concurrence of any other party so far as the same may be necessary.

(c) Unless required by the British Government, neither import any of the said items into any of the territories (except Canada) nor directly or indirectly assist any party in any of the territories (except Canada) (other than the English Companies) to make, use, exercise, apply or sell the same and do all acts and things reasonably required to prevent the importation of any of the said items into any of the territories (except Canada) but nothing contained in this Clause shall prevent the American Companies from selling any of said items to any person, firm or corporation, or governmental agency, in the normal course of their business, located in any place other than the Territories (except Canada) even though such items may eventually be imported into the territories in the normal course of business

of such purchasers without the connivance or aid of the American Companies.

2. The English Companies shall have the right free from any payment other than that mentioned in Clause 9 hereof, to make, use, exercise, apply and sell the said items on the Continent of Europe and the American Companies will forthwith grant or cause to be granted to the English Companies non-exclusive licenses for that purpose in respect of any invention patented in any part of the Continent of [fol. 43] Europe in connection with any of the said items. The America- Companies and the English Companies will enter into appropriate arrangements to obviate price cutting as regards any of the said items on the Continent of Europe.

3. The English Companies shall not import any of the said items except to the Territories (excepting Canada) and the Continent of Europe and will do all acts and things reasonably required from them to obviate such imports.

4. In the event of the American Companies or either of them, during a period of ten years from the date hereof, making or acquiring or becoming entitled to the control of any inventions useful in connection with the said items and which are being or shall hereafter be patented or otherwise protected or to any new product relating to said items of the American Companies or either of them, the American Companies will give to the English Companies an option or options for a period of 60 days to acquire an exclusive license or licenses or to purchase such patent rights for the territories, or any of them, on the best terms acceptable to the American Companies which have been bona fide offered to the American Companies, or either of them, by any third party, desiring such exclusive license or licenses or desiring to purchase such patent rights, and will not dispose of such patent rights or other rights for the territories (except Canada) or any of them until the expiration of such option period. Such option period shall run for a period of sixty (60) days after notice has been received by the English Companies or either of them, which notice shall be sent in writing and by registered mail.

5. The American Companies shall forthwith render every possible assistance to the English Companies and furnish

all information and documents possessed or controlled by them with a view to rendering possible the re-establishment or renewal of Patent No. 355022 and shall on the execution hereof hand the same to the English Companies or cause to be lodged at H. M. Patent Office in London all additional necessary documents. The American Companies will also hand to the English Companies, or cause to be lodged at H. M. Patent Office in London all necessary documents which it may have in support of the application for such re-establishment or execute any further documents that may be required for said re-establishment, and in particular, the original License dated the 8th day of December, 1932, in favor of Federal Laboratories Incorporated, and as soon as practicable any such documents shall be returned by the English Companies.

6. The American Companies and each of them hereby finally renounce all rights vested in them or their nominees to nominate or appoint one or more Directors of the Breeze Corporation of Great Britain Limited and have on the execution hereof procured the resignation of any Directors so appointed together with a formal release by the registered holders of all shares in the said Company heretofore held in trust for the American Companies or either of them of any such right of nomination by any means vested in such registered holders, or any of them.

7. The terms of all licenses, assignments or other documents required to carry this deed into full effect shall be agreed between the Solicitors of the parties and the Treasury Solicitor on behalf of the Secretary of State for Air or failing agreement between them, shall be referred for determination and settling to a barrister-at-law in Eng- [fol. 44] land of not less than seven years' standing to be appointed by the President for the time being of the Law Society in London.

8. In the case of any pending applications for patents, under which the American Companies presently have any right, title or interest, in respect of the Territories (except Canada) or any part thereof, the benefit of which is to be vested in the English Companies hereunder, the American Companies will diligently proceed with and complete such applications or procure the same to be diligently pro-

ceeded with and completed by all necessary parties and on completion thereof will, where the patents are issued to the American Companies or either of them or to any nominee or representative of the American Companies or either of them forthwith execute or procure the execution of an assignment thereof to the English Companies (or such of them as the English Companies shall appoint) as hereinbefore provided and where the American Companies or either of them only become interested in such new patents as Licensees only forthwith procure the execution of all necessary licenses in their own favor and grant a sub-license or sub-licenses in respect thereof to or otherwise effectively vest the benefit thereof in the English Companies (or such of them as the English Companies may appoint) to the intent that the English Companies shall effectively receive the benefit for the territories (except Canada) of the inventions or improvements comprised in any such applications as aforesaid.

9. In consideration of the premises, the English Companies will, on the completion hereof, cause to be paid to the American Companies jointly, at the office of their Solicitor, Lucius F. Crane, Esq., Bush House, W. C. 2, London, England, the sum of Three Hundred and Eighty-four Thousand ($384,000.00) Dollars, without being subject to any deduction for English taxes and assessments whatsoever and free from impounding.

10. As from the date of these presents the said two Agreements are hereby rescinded and the American Companies and each of them hereby release the English Companies and each of them and the English Companies and each of them hereby release the American Companies and each of them, from all claims and demands whatsoever which any of them now has against any other of them, or which are accruing due from any of them against any other of them arising at any time out of the said Agreements or either of them or anything connected therewith or otherwise in any manner whatsoever now subsisting or accruing in favor of any of them against any other of them and so that this release shall extend to and include all moneys due or accruing due in respect of commissions, royalties, fees and other payments from the English Companies or either of them to the American Companies or either of them Pro-

vided that there shall be excepted from this Release any sums now due or accruing due from the English Companies or one or other of them to the American Companies or one or other of them in respect of the price (exclusive of all commissions, royalties, fees and the like) of goods sold and delivered to the English Companies or either of them by the American Companies or either of them.

11. The term "the American Companies" and the term "the English Companies" shall wherever the context requires or admits be deemed to include their respective associated or subsidiary Companies or any Company, firm or persons controlled by them and their respective successors and assigns.

[fol. 45] 12. The costs and expenses of and in relation to all assignments, licenses and similar documents hereinbefore referred to and in particular those referred to in Clauses 1 (a) and (b) and 2 hereof shall be borne by the American Companies except that the English Companies shall pay the costs of their own Solicitors and Patent Agents and any English stamp duties payable in respect thereof and the fees (if any) of the barrister-at-law referred to in Clause 7 hereof shall be borne by both parties in equal shares.

13. It is mutually agreed that upon execution of this deed the English Companies shall be charged with the responsibility of maintaining any patents hereunder in the territories as hereinabove defined (except Canada and Continental Europe) and the American Companies are relieved of any responsibility or expenses in connection therewith.

14. This agreement shall be construed and operate according to English Law.

In Witness Whereof the respective companies have caused their respective common and/or corporate seals to be hereunto affixed.

The Plessey Company Limited. By ——.

Attest: ——, Secretary. The Common Seal of Plessey Company Limited was hereunto affixed in the presence of: ——, Director. ——, Secretary.

Breeze Corporation of Great Britain Limited. By ——

Attest: —— ——, Secretary. The Common Seal of Breeze Corporation of Great Britain Limited was hereunto affixed in the presence of: —— ——, Director. —— ——, Secretary.

[fol. 46] Breeze Corporations, Incorporated. By —— ——, President.

Attest: —— ——, Secretary. The Corporate Seal of Federal Laboratories, Incorporated was hereunto affixed in the presence of: —— ——, Secretary. —— ——, Director.

The First Schedule

All Breeze products referred to in the said Agreement dated 23rd September 1936 or in the current catalogue of productions issued by Breeze Corporations, Incorporated, particulars whereof have been communicated to the English Companies or either of them on or before the date of these presents including in particular Breeze electrical conduit systems and components thereof and Breeze ignition screening harnesses and components thereof.

The Coffman Engine Starters, components thereof and cartridges therefor and all other appliances or components comprised in the said Agreement of the 23rd July 1937.

The Second Schedule

List of patents covered by the licenses granted to the Breeze Corporation of Great Britain Ltd. and the Plessey Co. Ltd. by Breeze Corporations, Inc. and Federal Laboratories, Inc.

1. *Patents affecting the Breeze Corporations license.*

397661	Registered proprietor	(21.12.38)	J. J. Mascuch
416169	"	"	Breeze Corps., Inc.
465425	"	"	"
465451	"	"	"
468806	"	"	"
474548	"	"	"
475764	"	"	"
476133	"	"	"
481329	"	"	"
481406	"	"	"
488823	"	(23.12.38)	"
489904	"	"	"

[fol. 47] 2. *Patents under which the Federal Laboratories has an exclusive license affecting Coffman starters and cartridges.*

355022	(expired)	Reg. prop'tor (on 19.5.39)	R. A. Coffman
444172	"	"	"
445734	"	"	"
455630	"	"	"
455685	"	"	"
455686	"	"	"
458729	"	"	"
458981	"	"	"
478313	"	(on 30.6.39)	"
479985	"	"	"
481639	"	"	"

The Common Seal of the Plessey Company Limited was hereunto affixed in the presence of: —— ——, Director. —— ——, Secretary.

The Common Seal of Breeze Corporation of Great Britain Limited was hereunto affixed in the presence of: —— ——, Director. —— ——, Secretary.

The Corporate Seal of Breeze Corporations Incorporated was hereunto affixed in the presence of: —— ——, President. —— ——, Secretary.

The Corporate Seal of Federal Laboratories Incorporated was hereunto affixed in the presence of: —— ——, President. —— ——, Secretary.

[fol. 48] The common seal of The Plessey Company Limited was affixed by —— ——, the —— —— of said Company and said —— —— affixed his signature hereto on the — day of April, in the year of Our Lord, nineteen hundred and forty, in the presence of:

—— —— Secretary, —— —— Director.

—— —— ss.:

I, —— ——, of —— —— England, Secretary of The Plessey Company, Limited, make oath and say that on the — day of April, A. D. 1940, I was present and saw the common seal of The Plessey Company Limited affixed to the annexed Deed by —— ——, the —— —— of said Company, and that I saw said —— —— sign, execute and deliver the said Deed for the purposes therein mentioned and

that I and —— —— subscribed our names as the witnesses to the execution thereof.

—— ——.

Sworn to this — day of April, A. D. 1940, before me
—— ——, Notary Public.

The common seal of Breeze Corporation of Great Britain Limited was affixed by —— ——, the —— —— of said Company and said —— —— affixed his signature hereto on the — day of April, in the year of Our Lord, nineteen hundred and forty, in the presence of:

—— —— Secretary, —— —— Director.

[fol. 49] —— —— ss.:

I, —— ——, of —— ——, England, Secretary of Breeze Corporation of Great Britain Limited, make oath and say that on the — day of April, A. D. 1940, I was present and saw the common seal of Breeze Corporation of Great Britain Limited affixed to the annexed Deed by —— ——, the —— —— of said Company, and that I saw said —— —— sign, execute and deliver the said Deed for the purposes therein mentioned and that I and —— —— subscribed our names as the witnesses to the due execution thereof.

—— ——.

Sworn to the — day of April, A. D. 1940, before me
—— ——, Notary Public.

The corporate seal of Breeze Corporation, Incorporated was affixed by Joseph John Mascuch, the president of said Company and said Joseph John Mascuch affixed his signature hereto on the 26th day of April, in the year of Our Lord, nineteen hundred and forty, in the presence of:

—— —— Secretary, —— —— Director.

United States of America,
State of New York,
County of New York, ss.:

I, John Thomas Mascuch, of the City of Morristown, State of New Jersey, United States of America, Secretary of Breeze Corporations, Incorporated, make oath and say that on the 26th day of April, A. D. 1940, I was present and saw

the corporate seal of Breeze Corporations, Incorporated affixed to the annexed Deed by Joseph John Mascuch, the President of said Company, and that I saw said Joseph John Mascuch, sign, execute and deliver the said Deed for the purposes therein mentioned and that I and —— —— subscribed our names as the witnesses to the due execution thereof.

—— ——

Sworn to this 26th day of April, A. D. 1940, before me—— ——, Notary Public.

[fol. 50] State of New York,
City of New York,
County of New York, ss.:

On this 26th day of April, 1940, before me came Joseph John Mascuch and John Thomas Mascuch, to me known, who, being by me duly sworn, did depose and say that they reside in the State of New Jersey, U. S. A. and that they are the President and Secretary, respectively, of Breeze Corporations, Incorporated, the corporation described in, and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that they signed their names thereto by like order.

The corporate seal of Federal Laboratories Incorporated was affixed by Robert Reynolds, the President of said Company and said Robert Reynolds affixed his signature hereto on the 26th day of April, in the year of our Lord, nineteen hundred and forty, in the presence of:

—— —— Secretary, —— —— Director.

United States of America,
State of New York,
County of New York, ss.:

I, Harry Raub of the City of Pittsburgh, State of Pennsylvania, United States of America, Secretary of Federal Laboratories Incorporated, make oath and say that on the 26th day of April, A. D. 1940, I was present and saw the corporate seal of Federal Laboratories Incorporated affixed to the annexed Deed by Robert Reynolds, the President of said Company, and that I saw said Robert Reynolds sign,

execute and deliver the said Deed for the purposes therein mentioned and that I and —— —— subscribed our names as the witnesses to the due execution thereof.

—— ——.

Sworn to this 26th day of April, A. D. 1940, before me —— —— Notary Public.

STATE OF NEW YORK,
City of New York,
County of New York, ss.:

On this 26th day of April, 1940, before me came Robert Reynolds and Harry Rau, to me known, who being by me duly sworn, did depose and say that they reside in the City of Pittsburgh, State of Pennsylvania, U. S. A. and that they are the President and Secretary, respectively of Federal Laboratories, Incorporated, the corporation described in; and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that they signed their names thereto by like order.

[fol. 51] EXHIBIT "D" TO COMPLAINT

War Department, Washington

Royalty Adjustment Order No. W-9

(Royalty Adjustment Act 1942, Public Law 768, 77th Cong.; 35 U. S. C., 89-96)

In the Matter of

ROSCOE A. COFFMAN, Licensor,

and

FEDERAL LABORATORIES, INC., and BREEZE CORPORATIONS, INC., Licensee

Whereas, pursuant to authority contained in the Royalty Adjustment Act 1942, Public Law 768, 77th Cong.; 35 U. S. C., 89-96, written notice was given on or about March

3, 1943, to Roscoe A. Coffman (hereinafter called "Licensor") and to Federal Laboratories, Inc., and to Breeze Corporations, Inc. (individually and collectively hereinafter called "Licensee"), that the rates or amounts of royalties, provision for the payment of which by Licensee to Licensor is made in agreement between Roscoe A. Coffman as licensor and Federal Laboratories, Inc., as licensee, dated December 8, 1932, and which payments are made by Breeze Corporations, Inc., in its capacity as exclusive sales agent and distributor for Federal Laboratories, Inc., under an agreement between Breeze Corporations, Inc., and Federal Laboratories, Inc., dated April 28, 1937, extended by agreement of April 28, 1939, or by virtue of the corporate relationship existing between Breeze Corporations, Inc., and Federal Laboratories, Inc., or by virtue of any other [fol. 52] relationship, arrangement, agreement or understanding, according to which said royalties are paid by them or either of them to Licensor in respect of certain alleged inventions in or relating to cartridge starters, and which said royalties are directly or indirectly charged or chargeable to the War Department for or on account of the manufacture, use, sale or other disposition for the United States of said alleged inventions, were believed to be unreasonable or excessive taking into account the conditions of wartime production, and that until the making of an Order herein no royalties should be paid by Licensee to Licensor on account of such manufacture, use, sale or other disposition for the United States; and

Whereas, Licensor, upon his request, has presented in person and through his accountant such facts and circumstances as he desired having a bearing upon the rates or amounts of royalties to be determined, fixed and specified by Order pursuant to said Act;

Now, Therefore, pursuant to authority of and for the purposes set forth in said Act, and upon taking into account the facts and circumstances presented as aforesaid, the conditions of wartime production and such other facts and circumstances as ought properly to be considered in determining a fair and just rate or amount of royalties in the premises, it is hereby Ordered as follows, viz:

(1) Fair and just rates and amounts of royalties for the manufacture, use, sale or other disposition of said alleged

inventions are hereby determined, fixed and specified to be as follows:

(a) Upon each starter sold to or for either the War Department or the Navy Department, the sum of Eight ($8) Dollars each, and

[fol. 53] (b) upon parts and cartridges sold to or for either the War Department or the Navy Department, no royalties;

but not to exceed the sum of Fifty Thousand ($50,000) Dollars to be paid to Licensor in each calendar year commencing January 1, 1943 in respect of starters sold to or for the War Department and the Navy Department, added together.

(2) Until further Order, Licensee is hereby *authorized* to pay to Licensor, on account of any manufacture, use, sale or other disposition of said alleged inventions for the War Department heretofore occurred, or hereafter occurring while Sections 1 and 2 of said Act remain in force, royalties at the rate and not to exceed the amount determined, fixed and specified in paragraph (1) hereof, and no more, under

(a) the above-mentioned license agreement dated December 8, 1932, and

(b) any license or arrangement between Licensor and Licensee entered into on or after the effective date of said notice and during the time that Sections 1 and 2 of said Act remain in force which in any respect continues, supplements, modifies or supersedes the license referred to in subparagraph (a) hereof or the present arrangement under which said royalties are paid.

(3) Licensee is hereby directed to pay over, to the Treasurer of the United States, through Commanding General, Army Air Forces Materiel Command, attention, Royalty Adjustment Board, Wright Field, Dayton, Ohio, the balance, in excess of the payments authorized by paragraph (2) hereof, of all royalties specified in the licenses or arrangements referred to in paragraph (2) hereof which [fol. 54] were due to Licensor and were unpaid on the effective date of said notice, or since said date have or may hereafter become due to Licensor, on account of any manufacture, use, sale or other disposition of said inventions for

the War Department or the Navy Department heretofore occurred or hereafter occurring while Sections 1 and 2 of said Act remain in force; and demand is hereby made for payment forthwith of so much of said balance as is now due to Licensor.

(4) Reservation is hereby expressly made of the right to amend, modify, revoke or extend this Order as changed conditions may warrant, and of the right of the head of any department or agency of the Government, including but not limited to the War Department, to take such other, further and different action as may be authorized by any statute of the United States with respect to the licenses mentioned in paragraph (2) hereof or any other license which includes provision for the payment of royalties directly or indirectly chargeable to the Government for or on account of the manufacture, use, sale or other disposition for the United States of said alleged inventions.

(5) This Order is made concurrently with the making of a similar order by or in behalf of the Secretary of the Navy.

It is recommended that the Secretary of War make the foregoing Order.

Earl S. Patterson, Colonel, J. A. G. D., Assistant Air Judge Advocate.

The foregoing Order is hereby made.

W. F. Volandt, Colonel, Air Corps, Chief, Procurement Branch, Materiel Division, Office of the Assistant Chief of Air Staff, Materiel, Maintenance and Distribution.

[fol. 55] The foregoing Order is hereby approved in behalf of the Secretary of War.

By direction of the Under Secretary of War:

Fred C. Foy, Colonel, General Staff Corps, Acting Director, Purchases Division, Headquarters, Army Service Forces.

Dated: Washington, D. C., December 18, 1943.

[fol. 56] EXHIBIT "E" TO COMPLAINT

Royalty Adjustment Order No. N-7

(Royalty Adjustment Act 1942, Public Law 768, 77th Cong.; 35 U. S. C., 89-96)

In the Matter of ROSCOE A. COFFMAN, Licensor, and FEDERAL LABORATORIES, INC., and BREEZE CORPORATIONS, INC., Licensee

Whereas, pursuant to authority contained in the Royalty Adjustment Act 1942, Public Law 768, 77th Cong.; 35 U. S. C., 89-96, written notice was given on or about February 24, 1943, to Roscoe A. Coffman (hereinafter called "Licensor") and to Federal Laboratories, Inc., and to Breeze Corporations, Inc., (individually and collectively hereafter called "Licensee"), that the rates or amounts of royalties, provision for the payment of which by Licensee to Licensor is made in an agreement between Roscoe A. Coffman as Licensor and Federal Laboratories, Inc., as Licensee, dated December 8, 1932, and which payments are made by Breeze Corporations, Inc., in its capacity as exclusive sales agent and distributor for Federal Laboratories, Inc., under an agreement between Breeze Corporations, Inc., and Federal Laboratories, Inc., dated April 28, 1937, extended by agreement of April 28, 1939, or by virtue of the corporate relationship existing between Breeze Corporations, Inc., and Federal Laboratories, Inc., or by virtue of any other relationship, arrangement, agreement or understanding, accord-
[fol. 57] ing to which said royalties are paid by them or either of them to Licensor in respect of certain alleged inventions in or relating to cartridge starters, and which said royalties are directly or indirectly charged or chargeable to the Navy Department for or on account of the manufacture, use, sale or other disposition for the United States of said alleged inventions, were believed to be unreasonable or excessive taking into account the conditions of wartime production, and that until the making of an Order herein no royalties should be paid by Licensee to Licensor on account of such manufacture, use, sale or other disposition for the United States; and

Whereas, Licensor, upon his request, has presented in person and through his accountant such facts and circum-

stances as he desired having a bearing upon the rates or amounts of royalties to be determined, fixed and specified by Order pursuant to said Act;

Now, therefore, pursuant to authority of and for the purposes set forth in said Act, and upon taking into account the facts and circumstances presented as aforesaid, the conditions of wartime production, and such other facts and circumstances as ought properly to be considered in determining a fair and just rate or amount of royalties in the premises, it is hereby Ordered as follows, viz;

(1) Fair and just rates and amounts of royalties for the manufacture, use, sale or other disposition of said alleged inventions are hereby determined, fixed and specified to be as follows:

(a) upon each starter sold to or for either the War Department or the Navy Department, the sum of Eight ($8.00) Dollars each, and

[fol. 58] (b) upon parts and cartridges sold to or for either the War Department or the Navy Department, no royalties;

but not to exceed the sum of Fifty Thousand ($50,000) Dollars to be paid to Licensor in each calendar year commencing January 1, 1943 in respect of starters sold to or for the Navy Department and the War Department, added together.

(2) Until further Order, Licensee is hereby authorized to pay to Licensor, on account of any manufacture, use, sale or other disposition of said alleged inventions for the Navy Department heretofore occurred, or hereafter occurring while Sections 1 and 2 of said Act remain in force, royalties at the rate and not to exceed the amount determined, fixed and specified in paragraph (1) hereof, and no more, under

(a) the above-mentioned license agreement dated December 8, 1932, and

(b) any license or arrangement between Licensor and Licensee entered into on or after the effective date of said notice and during the time that Sections 1 and 2 of said Act remain in force which in any respect continues, supplements, modifies or supersedes the license

referred to in subparagraph (a) hereof or the present arrangement under which said royalties are paid.

(3) Licensee is hereby directed to pay over to the Treasurer of the United States, through Commanding General, Army Air Forces Materiel Command, attention, Royalty Adjustment Board, Wright Field, Dayton, Ohio, the balance, in excess of the payments authorized by paragraph (2) hereof, off all royalties specified in the licenses or arrangements referred to in paragraph (2) hereof which [fol. 59] were due to Licensor and were unpaid on the effective date of said notice, or since said date have or may hereafter become due to Licensor, on account of any manufacture, use, sale or other disposition of said inventions for the War Department or the Navy Department heretofore occurred or hereafter occurring while Sections 1 and 2 of said Act remain in force; and demand is hereby made for payment forthwith of so much of said balance as is now due to Licensor.

(4) Reservation is hereby expressly made of the right to amend, modify, revoke or extend this Order as changed conditions may warrant, and of the right of the head of any department or agency of the Government, including but not limited to the Navy Department, to take such other, further and different action as may be authorized by any statute of the United States with respect to the licenses mentioned in paragraph (2) hereof or any other license which includes provision for the payment of royalties directly or indirectly chargeable to the Government for or on account of the manufacture, use, sale or other disposition for the United States of said alleged inventions.

(5) This Order is made concurrently with the making of a similar order by or in behalf of the Secretary of War.

Harold G. Bowen, Rear Admiral, U. S. N. Richard Spencer, Commander, U. S. N. R.

Approved: Forrestal, Acting Secretary of the Navy.

[fol. 60] EXHIBIT "F" TO COMPLAINT

Army Air Forces, Headquarters of the Materiel Command,

EHC: mdg : 34 1002
Wright Field, Dayton, Ohio
30 May 1944

Subject: Amounts due the United States Pursuant to Royalty Adjustment Orders N-7 and W-9.

To: Breeze Corporations, Inc., 18-38 South 6th Street, Newark, New Jersey.

1. Pursuant to the terms of Navy Department Royalty Adjustment Order No. N-7 issued on 23 December 1943 and War Department Royalty Adjustment Order No. W-9 issued on 18 December 1943, you have been directed to pay over to the Treasurer of the United States, through Commanding General, Army Air Forces Materiel Command, Attention: Royalty Adjust Board, Wright Field, Dayton, Ohio, all royalties due and owing from you to Roscoe A. Coffman, in excess of the sum of $50,000 per year commencing 1 January 1943 in respect of starters sold to or for the War Department and the Navy Department.

2. Since the three man District Court has denied stays under these Orders, as has the Supreme Court of the United States, the aforementioned orders are in full force and effect. This Board has been authorized to receive and collect all payments specified in the Orders.

3. Remittance is to be made by check payable to "Treasurer of the United States" which check should be accompanied by an explanatory letter of transmittal addressed to "Commanding General, Army Air Forces, Materiel Command, Attention: Royalty Adjustment Board, Wright Field, Dayton, Ohio." Your prompt attention to this matter will be appreciated.

J. C. Burton, Lt. Colonel, J. A. G. D., Chairman, Royalty Adjustment Board.

(Here follows 1 poster, side folios 61-64)

[fols. 61–64]

EXHIBIT "G" TO COMPLAINT

Breeze Corporations, Inc. and Federal Laboratories, Inc.
Estimated Summary of Sales and Royalties, Subject to Final Adjustment, Due Mr. R. A. Coffman for the Years 1937 to 1943 Inclusive

Year	Name	Royalty Statements Net Sales	Sales Omitted—No Royalties Paid: 25% of Gross Sales	Starters Breeches	Cartridges	Parts-Tools Repairs etc.	Royalty Sales Should Be	6% Royalties: Should Be	Actually Paid	Due R. A. Coffman
1937	Breeze Corporations, Inc.	$ 45,890.10	$ 15,296.69	$ 3,0 8.24	$ 2,567.00	$ 1,444.49	$ 68,256.22	$ 4,095.37	$ 2,754.30	$ 1,341.07
1938		151,995.80	50,664.49	4,9 0.00	0	933.45	208,543.74	12,512.62	9,119.70	3,392.92
1939		88,846.36	29,615.47	4,9 4.00	124.00	1,375.13	124,874.96	7,500.50	5,000.00	2,500.50
1940		155,778.50	51,951.86	8,8 5.00	1,036.00	3,300.62	220,921.98	13,255.32	8,970.22	4,285.10
1941		523,847.10	174,615.73	-0-	91,628.80	1,687.35	791,778.98	47,506.74	31,430.83	16,075.91
1942		1,652,907.57	550,965.87	-0-	378,860.59	31,562.19	2,614,296.22	156,857.77	99,174.47	57,683.30
	Sub-total	2,619,265.43	873,110.11	21,7 7.24	474,216.39	40,302.93	4,026,672.10	241,728.32	156,449.52	85,278.80
1943		2,361,334.61	787,111.55	-0-	443,390.02	11,059.31	3,602,895.49	216,173.73	-0-	216,173.73
	Total	4,980,600.04	1,660,221.66	21,7 7.24	917,606.41	51,362.24	7,631,567.59	457,902.05	156,449.52	301,452.53
1937	Federal Laboratories, Inc.			33,6 3.14	22,137.52	28,453.71	84,234.37	5,054.06		5,054.06
1938				17,4 1.40	43,962.42	124.16	61,507.98	3,690.47		3,690.47
1939				3,9 9.55	6,276.55	-0-	10,246.10	614.77		614.77
1940				-0-	250.00	-0-	250.00	15.00		15.00
1941				-0-	355.00	-0-	355.00	21.30		21.30
1942				-0-	381,483.82	-0-	381,483.82	11,532.88(A)		11,532.88
	Sub-total			55,0 4.09	454,465.31	28,577.87	538,077.27	20,928.48		20,928.48
1943				-0-	820,749.14	-0-	820,749.14(B)	49,244.95(A)		49,244.95
	Total			$55,0 4.09	$1,275,214.45	$28,577.87	$1,358,826.41	$ 70,173.43		$ 70,173.43
1937 to 1942	Breeze Corporations, Inc.	$2,619,265.43	$ 873,110.11	$21,7 7.24	$ 474,246.39	$40,302.93	$4,028,672.10	$241,728.32	$156,449.52	$ 85,278.80
	Federal Laboratories, Inc.			55,034.09	454,465.31	28,577.87	538,077.27	20,928.48		20,928.48
	Total	2,619,265.43	873,110.11	76,8 1.33	928,681.70	68,880.80	4,566,749.37	262,656.80	156,449.52	106,207.28
1943	Breeze Corporations, Inc.	2,361,334.61	787,111.55		443,390.02	11,059.31	3,602,895.49	216,173.73		216,173.73
	Federal Laboratories, Inc.				820,749.14		820,749.14	49,244.95		49,244.95
	Total	2,361,334.61	787,111.55		1,264,139.16	11,059.31	4,423,644.63	265,418.68		265,418.68
GRAND TOTAL		$4,980,600.04	$1,660,221.66	$76,811.33	$2,192,820.86	$79,940.11	$8,990,394.00	$528,075.48	$156,449.52(C)	$371,625.96

NOTE: (A) Royalty consists of 6% on $2,945.60 and 3% on $378,538.22 agreed to by R. A. Coffman.

(B) Royalty consists of 6% on $672,821.07 and 3% on $8,583.08 to October 31,1943 agreed to by R. A. Coffman and 6% on estimated November and December Sales of $68,000.00 per month.

(C) Excludes $1,000.00 estimated paid to R. A. Coffman for 1937. We do not have Atlas statement for the entire year.

[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING TEMPORARY RESTRAINING ORDER—Filed June 14, 1944

Now, to wit, June 14, 1944, upon reading and filing the verified complaint and exhibits annexed thereto in the above-entitled cause and the Court finding from the evidence submitted to the Court in the form of affidavits and exhibits annexed to the complaint that irreparable loss or damage will result to the plaintiff if the royalties due him under the contract, Exhibit A annexed to the complaint, are paid as provided in Royalty Adjustment Orders Nos. W-9 and N-7 to the Treasurer of the United States, no method or means being specified in the appropriate Act of Congress for the return of such royalties from the Secretary of the Treasury to the plaintiff or to the defendants once they are paid to the Treasurer of the United States, in the event that the act under which said Royalty Adjustment Orders Nos. W-9 and N-7 are issued, to wit, Public Law 768 of the Seventh-Seventh Congress (35 USCA §§89-96), should be declared unconstitutional in accordance with the prayer of the plaintiff's complaint and good cause ap- [fols. 66-69] pearing, it is hereby ordered as follows:

1. That defendants, Breeze Corporations, Inc., a New Jersey corporation, and Federal Laboratories, Inc., a Delaware corporation, and their respective officers, agents and attorneys, be and they hereby are enjoined and restrained from paying to the Treasurer of the United States all royalties in excess of $50,000 due and payable to the plaintiff pursuant to an agreement made between the plaintiff and defendant, Federal Laboratories, Inc., dated December 8, 1932, in compliance with Royalty Adjustment Orders Nos. W-9 and N-7, which have been served upon the plaintiff and the defendants herein.

2. That on June 23, 1944, or as soon thereafter as such a court can be convened, a hearing shall be held before a special court of three judges to determine whether a preliminary injunction of like tenor shall be issued, whether Public Law 768 of the Seventy-Seventh Congress (35 USCA §§ 89-96) should be declared unconstitutional in

accordance with the prayer of plaintiff's complaint, whether Royalty Adjustment Orders Nos. W-9 and N-7 are valid and any other matters that may properly come before said Court.

3. That the plaintiff furnish a bond to be approved by this Court in the sum of $250.00.

4. That a copy of this order and the complaint, with affidavits and exhibits annexed thereto, shall be served forthwith upon the defendants and also upon the United States Attorney for the Western District of Pennsylvania and a copy forthwith shall be mailed to the Attorney General of the United States at his office in Washington, D. C.

R.M.Gibson, D. J.

[fol. 70] IN UNITED STATES DISTRICT COURT

[Title omitted]

RESPONSE TO CERTIFICATION OF JUNE 14, 1944 AND MOTION FOR LEAVE TO INTERVENE

Comes now the United States of America, by its Assistant Attorney General Francis M. Shea and its United States Attorney Charles F. Uhl, and shows that:

(1) On or before June 14, 1944, the plaintiff in the above-entitled case filed a complaint in this Court seeking an injunction forbidding compliance by the above-named defendants with Royalty Adjustment Orders Nos. W-9 and N-7 issued under the Royalty Adjustment Act of October 31, 1942 (Public Law 768, 77th Cong., approved October 31, 1942, 35 U. S. C. §§ 89-96). The complaint charged that the said Act and the Orders issued thereunder are invalid and unconstitutional. On June 14, 1944, the Honorable R. M. Gibson, District Judge of this Court granted a temporary restraining order as prayed, and ordered that a hearing "be held before a special court of three judges to determine whether a preliminary injunction of like tenor shall be issued," whether said Act "should be declared unconstitutional in accordance with the prayer of plaintiff's complaint," and whether the Royalty Adjustment Orders are valid. That order directed that a copy thereof, together

with a copy of the complaint and the annexed affidavits and exhibits, be served upon the United States Attorney for the Western District of Pennsylvania and the Attorney General of the United States. Such service was made. The United States takes this order to be a certification, under the Act of August 24, 1937 (28 U. S. C. § 401), that the [fol. 71] plaintiff in the above entitled case has challenged the constitutionality of an Act of Congress.[1]

(2) Since it thus appears that there is drawn in question in a court of the United States the constitutionality of an Act of Congress affecting the public interest, in a suit to which neither the United States nor any agency, officer or employee thereof is a party, the United States hereby moves, pursuant to the Act of August 24, 1937 and Rule 24(a) of the Federal Rules of Civil Procedure, for leave to intervene and become a party for the purposes of said Act.

(3) Intervention is sought herein in order to support the constitutionality and validity of the Royalty Adjustment Act herein drawn in question and of Royalty Adjustment Orders Nos. W-9 and N-7.

(4) The United States is filing herewith a Motion to Dismiss the Complaint in Part and to Vacate the Temporary Restraining Order. The United States prays that said motion be deemed and considered a "Pleading of the United States in Intervention," in accordance with Rule 24(c) of the Federal Rules of Civil Procedure, and that said pleading be deemed the appearance of the United States in support of the constitutionality of the Act of Congress herein drawn in question, and in opposition to all pleadings and motions of the parties hereto that have been or may be made herein insofar as such pleadings or motions are

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[1] The complaint prays (par. 32(4)) that "a special three-judge court may be summoned and that the Attorney General of the United States may be notified of a hearing on this bill, all as required by the Act of Congress of August 24, 1937, U. S. C. Title 28, Sec. 380(a)."

based on the contention that said Act of Congress or any order issued thereunder is in any respect, or in any application, unconstitutional.

(S.) Francis M. Shea, Assistant Attorney General.
Charles F. Uhl, United States Attorney.

July, 1944.

[fol. 72] In United States District Court

[Title omitted]

Motion of Intervenor to Vacate Temporary Restraining Order and to Dismiss Complaint in Part

Comes now the United States of America as intervenor in this action, through its Assistant Attorney General Francis M. Shea and its United States Attorney Charles F. Uhl, and moves the Court to vacate the temporary restraining order granted June 14, 1944, and to dismiss the complaint filed by the plaintiff herein insofar as it purports to allege grounds for, and prays for, injunctive relief against compliance by defendants herein with Royalty Adjustment Orders No. W-9 and N-7 issued pursuant to the Royalty Adjustment Act of October 31, 1942 (56 Stat. 1013, 35 U. S. C. 89-96), to wit, the following paragraphs of the complaint: Pars. 24, 25, 26, 27, 28, 29, 30, 32; and subparagraphs (3) and (4) of par. 32.

As grounds for such motion, the United States shows that:

I. The judgment of the specially constituted three-judge court in the District of New Jersey, entered on April 6, 1944, in the case of *Roscoe A. Coffman* v. *Federal Laboratories, Inc. and Breeze Corporations, Inc.; United States of America, Intervenor*, Civil No. 3289, dismissing plaintiff's complaint because of the absence of a justiciable "case or controversy" and because of the adequacy of plaintiff's remedy at law, is *res judicata* as to that portion of the present action which seeks injunctive relief against compliance by defendants with the aforesaid Royalty Adjustment Orders.

[fol. 73] II. The granting by this Court of an injunction restraining compliance by defendants with the Royalty

Adjustment Orders in this case would be inconsistent with the order of the Supreme Court of the United States of May 29, 1944, and the order of the three-judge court in New Jersey of May 24, 1944, denying plaintiff herein a temporary injunction against such compliance pending disposition of the appeal to the Supreme Court from the aforesaid judgment of the three-judge court in New Jersey.

III. All the issues here raised by the prayer for injunctive relief in the complaint are now pending decision in the Supreme Court (in *Roscoe A. Coffman* v. *Breeze Corporations, Inc. and the United States of America*, October Term, 1944, No. 71) and in the Circuit Court of Appeals for the Third Circuit (in *Timken-Detroit Axle Co.* v. *Alma Motor Co.*, No. 8300).

In support of this motion the United States submits the following material, annexed hereto:

1. Affidavit of Assistant Attorney General Francis M. Shea.

2. Appendix A: Complaint filed in *Coffman* v. *Federal Laboratories, Inc. and Breeze Corporations, Inc.*; Civil Action No. 3289, District Court of the United States for the District of New Jersey.

3. Appendix A, Exhibit B: Complaint filed in *Coffman* v. *Federal Laboratories, Inc. and Breeze Corporations, Inc.*; Civil Action No. 1395, District Court of the United States for the District of New Jersey.

4. Appendix B: Opinion of the three-judge court in *Coffman* v. *Federal Laboratories, Inc. and Breeze Corporations, Inc.*; Civil Action No. 3289, District Court of the United States for the District of New Jersey.

5. Appendix C: Order denying plaintiff's motion for a stay pending appeal to the Supreme Court, in *Coffman* v. *Federal Laboratories, Inc. and Breeze Corporations, Inc.*; Civil Action No. 3289, District Court of the United States for the District of New Jersey.

[fols. 74-170] 6. Appendix D: Order of the Supreme Court postponing further consideration of the question of jurisdiction of the Supreme Court until a hearing on the merits in *Coffman* v. *Breeze Corporations, Inc. and the United*

States of America, Supreme Court, October Term, 1944, No. 71.

7. Appendix E: Petition of appellant to the Supreme Court for a temporary injunction pending appeal, in *Coffman* v. *Breeze Corporations, Inc.*, Supreme Court, October Term, 1944, No. 71.

8. Appendix F: Memorandum of the United States submitted to the Supreme Court in opposition to appellant's petition for a temporary injunction pending appeal, in *Coffman* v. *Breeze Corporations, Inc. and the United States of America*, Supreme Court, October Term, 1944, No. 71.

9. Appendix G: Order of the Supreme Court denying application for a temporary injunction pending appeal, in *Coffman* v. *Breeze Corporations, Inc. and the United States of America*, Supreme Court, October Term, 1944, No. 71.

(S.) Francis M. Shea, Assistant Attorney General.
Charles F. Uhl, United States Attorney.

July 1944.

[fol. 171] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING MOTION OF UNITED STATES OF AMERICA FOR LEAVE TO INTERVENE—Filed July 18, 1944

This matter coming on to be heard before the undersigned, after notice to all parties, and it appearing that the plaintiff in the complaint filed in this case charges that the Royalty Adjustment Act of October 31, 1942 (Public Law 768, 77th Congress, approved October 31, 1942) and Royalty Adjustment Orders Nos. W-9 and X-7 issued thereunder are invalid and unconstitutional; and it having been certified to the United States, pursuant to the Act of August 24, 1937 (28 U. S. C. 401), that there is drawn in question in a court of the United States the constitutionality of an Act of Congress affecting the public interest, in a suit to which neither the United States nor any agency, officer or employee thereof is a party, and the United States having filed a response to said certification and motion for leave to inter-

vene, pursuant to said Act of August 24, 1937 and Rule 24 of the Federal Rules of Civil Procedure,

[fol. 172] Now, Therefore, It Is Ordered on this 18 day of July, 1944, that the said motion of the United States be and the same is hereby granted.

Charles Alvin Jones, Circuit Judge; R. M. Gibson, D. J.; F. P. Schoonmaker, D. J.

[File endorsement omitted]

[fol. 173] In United States District Court

[Title omitted]

Order Continuing Temporary Restraining Order Pending Disposition of Motion of United States to Vacate and Dismiss—Filed July 18, 1944

This matter coming on to be heard on the return of the Order granted herein June 14, 1944, duly continued to this day, and on motion of the United States, as Intervenor, to vacate said temporary restraining order and to dismiss the Complaint in part, and argument of counsel for the respective parties having been heard and considered,

Now, therefore, it is ordered that said temporary restraining order be, and the same is, hereby continued, pending disposition of the Motion of the United States as Intervenor to vacate said temporary restraining order and to dismiss the Complaint in part, and until the further Order of the Court in the premises.

By the Court: Charles Alvin Jones, U. S. Circuit Judge; R. M. Gibson, D. J.; F. P. Schoonmaker, U. D. J.

Dated: July 18, 1944.

[File endorsement omitted]

[fol. 174] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF FEDERAL LABORATORIES, INC.

Federal Laboratories, Inc., one of the defendants above named, makes answer to each of the paragraphs of the plaintiff's complaint as follows:

1. Defendant has no knowledge or information as to the averments in the 1st paragraph.

2. Defendant admits the averments in the 2nd paragraph.

3. Defendant admits the averments in the 3rd paragraph.

4. Defendant denies the averments of the 4th paragraph and alleges that for reasons hereinafter set forth, it is not indebted to the plaintiff in sums exceeding $3,000.00 exclusive of interest and costs, as claimed.

Answer to Plaintiff's First Cause of Action:

5. Defendant admits the first sentence of the 5th paragraph and admits the exhibit referred to, subject to comparison with the original. Defendant denies that Breeze Corporations, Inc., is or was its successor in business and denies that it has or had a successor in business. Defendant alleges that although a successor to be known as "Federal Ordnance & Engineering Company" was contemplated in the agreement of December 8, 1932, referred to, such a company was never in fact organized, and this defendant has not been succeeded in business by any person, firm, [fol. 175] corporation, or organization whatsoever. Defendant alleges that if the plaintiff granted any license to the said Breeze Corporations, Inc., this defendant has no knowledge or information regarding same, and alleges further that if such license were granted it would constitute a direct violation of the agreement of December 8, 1932, between the plaintiff and this defendant.

6. The averments in the 6th paragraph are admitted, subject to comparison with the original agreement referred to.

7. It is admitted that Breeze Corporations, Inc., purchased all of the outstanding common capital stock of this defendant, but it is denied that Breeze Corporations, Inc.,

dominates and controls all the business and policies of this defendant, and it is alleged that this defendant operates entirely independently of the said Breeze Corporations, Inc.

8. The averments in the 8th paragraph are denied. Defendant alleges that on or about April 28, 1937, it entered into an agreement with Breeze Corporations, Inc., in which the latter undertook to manufacture Coffman starters and parts for cost plus 10%, and to sell and distribute same for a commission of 25% from the sales price of all starters, parts and cartridges. This agreement was renewed by said parties on April 28, 1939, and both of these agreements were contemplated and required under the terms of the original agreement between the plaintiff and this defendant dated December 8, 1932.

9. Defendant denies that it was a party to any agreement with the Breeze Corporations, Inc., or any English company on or about September 23, 1936, but admits that it entered into an agreement with the Plessey Company, Ltd., dated July 3, 1937, which agreement was entered into by this defendant under the express provisions of the ninth paragraph of the original agreement between the plaintiff and this defendant dated December 8, 1932.

10. Defendant denies the averments of the 10th paragraph and alleges that insofar as the dealings of this de- [fol. 176] fendant were concerned, plaintiff was fully advised concerning them and acquiesced therein.

11. Defendant admits the first sentence in the 11th paragraph subject to comparing the agreement referred to with the original. Defendant avers that the agreement referred to was executed by the plaintiff after a full and complete disclosure of all material facts.

12. The averments in the 12th paragraph are admitted, subject to comparing the agreement and deed referred to with the originals.

13. Defendant denies that it procured said release from the plaintiff, but alleges that the plaintiff entered into same with the English companies directly in order to expedite the transaction.

14. Defendant denies that it misled plaintiff in any way and alleges that the total amount paid by the British com-

panies included payment for rights other than those covered by the plaintiff's patents, and the defendant under no circumstances could nor did promise plaintiff one-half of the total amount received, but promised plaintiff only one-half of the amount paid for his patent rights. The plaintiff was fully cognizant that the amount received for his interest was $100,000.00, one-half of which was duly paid to and accepted by him.

15. The defendant denies the averments in the 15th paragraph, and denies that it made any fraudulent representations to the plaintiff. This defendant denies that it received any amount in excess of $100,000.00 and it avers that all amounts paid by the English companies over and above such an amount were paid to Breeze Corporations, Inc. for patent rights in which the plaintiff had no title or interest.

16. Defendant denies the averments of the 16th paragraph and alleges that the defendant made no misrepresentations and that the plaintiff received the entire amount [fol. 177] to which he was entitled from this defendant arising out of the transaction referred to.

17. Defendant avers the plaintiff has had an accounting of all monies received from the British Companies by this defendant, and avers that all monies due plaintiff arising out of said transaction have been paid in full.

Answer to Plaintiff's Second Cause of Action:

18. The defendant repeats the answers hereinbefore made to paragraphs 5 to 8 inclusive with the same force and effect as though the same were here set forth at length.

19. Defendant denies the averments of the 19th paragraph, and denies that Breeze Corporations, Inc. took over the manufacture of Coffman starters and parts as stated, but alleges that the manufacture and distribution of said starters and parts as covered by the two agreements between Breeze Corporations, Inc. and this defendant dated April 29, 1937, and April 27, 1939, and hereinbefore referred to, was contemplated and authorized by the original agreement between the plaintiff and this defendant dated December 8, 1932. This defendant has no knowledge regarding the alleged improper labeling of Coffman starters by Breeze Corporations, Inc., and other alleged violations by

said Breeze Corporations, Inc. Defendant avers that it has no knowledge of the existence of any contract between plaintiff and Breeze Corporations, Inc., and it therefore has no knowledge of any breach of contract upon the part of Breeze Corporations, Inc. This defendant denies that it breached its contract with the plaintiff or that it wrongfully deducted 25% of the plaintiff's royalties, but avers that said 25% deduction was an item of cost necessary in the sale and distribution of said starters and parts. Defendant denies that it failed and neglected to keep proper books and records, as required by its agreement with the plaintiff, and defend [fol. 178] ant further denies that it kept confusing and improper records, but alleges that it kept full, accurate, and proper books and records in compliance with said licensing agreement.

20. Defendant admits the agreements referred to in the 20th paragraph. A true and correct copy of the first agreement dated April 28, 1937, is attached hereto, made part hereof, and marked Exhibit "A", and a true and correct copy of the second agreement dated April 28, 1939, is attached hereto, made part hereof, and marked Exhibit "B". Defendant denies that said agreements were made without notice or knowledge to the plaintiff and in order to take from him any part of the royalty to which he was entitled; but defendant alleges that said agreements were contemplated and authorized by the original agreement between the plaintiff and this defendant dated December 8, 1932, and were entered into because the defendant believed that to avail itself of the production and marketing facilities of the Breeze Corporations, Inc. for a cost of only 25% would produce an income both to the plaintiff and this defendant far in excess of any which could be realized without said agreements, the financial condition of this defendant being dangerously precarious at that time, and it being further believed that these agreements would be the means of financial salvation for both the plaintiff and this defendant, which belief has been justified by subsequent events.

21. Defendant denies the averments in the 21st paragraph, and alleges that all royalty statements sent to the plaintiff were accurate and that neither 25% nor any other amounts were wrongfully deducted from the royalties due the plaintiff.

22. Defendant denies the averments of the 22nd paragraph. Defendant alleges that the royalties paid to the plaintiff were in accordance with the original agreement of December 8, 1932, that no amounts were wrongfully deducted, and that the 25% referred to was a proper and necessary item of cost incident to the sale and distribution of starters and parts.

[fol. 179] 23. Defendant has no knowledge as to when the Civil Action referred to in paragraph 23 will be reached for trial, and alleges that it has no interest in the same.

24. Defendant has no knowledge as to the averments in the 24th paragraph, but alleges that on February 24, 1943, the Navy Department notified it that it should pay no royalties to the plaintiff until a Royalty Adjustment Order was made, and on March 3, 1943, a similar order was received from the War Department.

25. Defendant has no knowledge as to the averments in the 25th paragraph, and makes no answer to the generalities therein set forth.

26. Defendant has no knowledge as to the averments in paragraph 26, except that on or about December 18, 1943, it received the Royalty Adjustment Orders referred to.

27. Defendant has no knowledge as to the averments in the 27th paragraph and suggests that the record speaks for itself.

28. Defendant has no knowledge as to the averments in the 28th paragraph, and suggests that the record speaks for itself.

29. Defendant has no knowledge as to the averments in the 29th paragraph and suggests that the record speaks for itself.

30. Defendant has no knowledge regarding the facts averred in the 30th paragraph, and as to the other averments defendant suggests that the interpretation and application of the Act of Congress and Royalty Adjustment Orders referred to, are questions of law for the Court to decide, and it therefore makes no answer to the conclusions of law therein set forth.

31. Defendant denies the averments of the 31st paragraph and denies that it failed, neglected, and refused to render statements in accordance with paragraph 3 of the original agreement of December 8, 1932. Defendant alleges that it rendered and plaintiff received statements prepared in accordance with said paragraph 3 until such time as it was served with the Army and Navy notices hereinbefore referred to; and moreover, that it submitted its entire books [fol. 180] and records up to and including November, 1943, to Chambellen, Berger, and Welte, Certified Public Accountants, designated and employed by the plaintiff to examine the books and records of this defendant.

32. Defendant has no knowledge as to the averments of the 32nd paragraph and makes no answer thereto.

Wherefore, in answer to the plaintiff's first and second causes of action, this defendant denies that the plaintiff is entitled to any of the 6 judgments prayed for.

Answer to Plaintiff's Third Cause of Action:

33. Defendant repeats the answers hereinbefore made to paragraphs 5, 6, 7, and 8 of the First Cause of Action and paragraph 23 of the Second Cause of Action with the same force and effect as though the same were here set forth at length.

3. Defendant has no knowledge regarding the examination of the books and records of the Breeze Corporations, Inc., but admits that said Certified Public Accountants examined the books and records of this defendant. This defendant has no knowledge regarding that part of the schedule marked Exhibit "G" which refers to the Breeze Corporations, Inc. This defendant denies that said exhibit insofar as it purports to apply to this defendant is accurate or that it properly sets forth the status of the account between the plaintiff and this defendant. Defendant alleges that under the terms of the original agreement of December 8, 1932, the sum of $180,230.44 is due and owing from this defendant, and since the Breeze Corporations, Inc. was not a party to said agreement, nothing whatsoever could be due and owing plaintiff from said Breeze Corporations, Inc., unless by reason of other agreements or liabilities of which this defendant has no knowledge or information.

34. This defendant denies that it is indebted to the plaintiff in the sum of $371,625.96 but computes the amount due [fol. 181] under the original agreement of December 8, 1942, as follows:

Amount due in 1942 on Navy Order No. 500-3686 at 3% in accordance with agreement of July 31, 1941	$10,510.46
Balance due in 1943 on above order	1,833.24
Amount due in 1943 on other orders at 6%	42,570.56
Amount due in 1943 on Gun Starters and parts manufactured by Breeze Corporations, Inc. pursuant to the agreements of 1937 and 1939	141,680.08
Total	$196,594.34
Less one-half of amount of royalties paid ($32,727.80) during 1943 by Atlas Powder Co.	16,363.90
Balance Due	$180,230.44

35. Defendant denies that judgment should be granted against it in the sum of $371,625.96, or in the sum of $180,230.44, or in any similar amount, for the reason that regardless of any amount herein admitted to be due under the terms of the original agreement of December 8, 1932, Royalty Adjustment Orders Nos. W-9 and N-7 which were served upon the plaintiff in December of 1943, prohibit payment of all claims of the plaintiff for royalties, except the amounts provided in said Orders, which are the amounts and the only amounts admitted to be now due and owing by this defendant.

Seif, Evashwick & Best, 1115 Berger Building, Pittsburgh, Pennsylvania, Attorneys for Defendant, Federal Laboratories, Inc. Charles Lysle Seif, of Counsel.

CLS:CEB. 8-7-44.

[fol. 182] EXHIBIT "A" TO ANSWER

Agreement

This Agreement, made this 28th day of April, 1937, by Federal Laboratories, Inc., a corporation of the State of Delaware, having its principal place of business in Pittsburgh, Pennsylvania, hereinafter called Federal, and the Breeze Corporations, Inc., a corporation of the State of New Jersey with principal place of business in Newark, New Jersey, hereinafter called Breeze.

Whereas, Federal is the sole owner of a license under the Coffman Starter Patents with Roscoe A. Coffman dated December 8, 1932 and

Whereas, Breeze are engaged in the manufacture and sale of aircraft accessories and maintain a sales organization capable of selling the starter to the aircraft industry and maintain a plant equipped with machinery for the manufacture of the starters,

Now, Therefore, for and in consideration of the sum of One Dollar ($1.00) paid by each of the parties to the other, receipt of which is hereby acknowledged, and in further consideration of the faithful performance of the covenants and conditions hereinafter recited, the parties hereto have agreed as follows:

First: Federal hereby employs Breeze to manufacture for them cartridge starters and accessories on the basis of cost plus ten per cent (10%).

Second: Federal hereby appoints Breeze as exclusive sales distributor for Coffman starters, accessories and cartridges and agrees to allow them a discount or pay them a commission of twenty-five per cent (25%) from the sales price of said starter, parts and cartridges.

Third: Breeze hereby agrees to manufacture said starters as ordered by Federal under the terms and conditions hereby agreed upon.

Fourth: Breeze hereby accepts said exclusive sales arrangement and agrees to diligently and aggressively pro-

[fol. 182a] mote the sale of said starters and cartridges and to maintain a force sufficient to service the customers in the use of said equipment.

This Agreement is to continue for a period of two years from date.

Federal Laboratories, Inc. (Seal.), by John W. Young, Breeze Corporations, Inc. (Seal), by J. J. Mascuch, Pres.

Witness: F. Harris. Attest: John T. Mascuch.

[fol. 183] EXHIBIT "B" TO ANSWER

Agreement

This Agreement, made this 28th day of April, 1939, by and between Federal Laboratories, Inc., a corporation of the State of Delaware, having its principal place of business in Pittsburgh, Pennsylvania, hereinafter called Federal, and the Breeze Corporations, Inc., a corporation of the State of New Jersey with principal place of business in Newark, New Jersey, hereinafter called Breeze.

Whereas, Federal is the sole owner of a license under the Coffman Starter Patents with Roscoe A. Coffman dated December 8, 1932 and

Whereas, Federal under its license is permitted to cause to be manufactured and sold said starter, parts and accessories, and

Whereas, Breeze are engaged in the manufacture and sale of aircraft accessories and maintain a sales organization capable of selling the starter to the aircraft industry and maintain a plant equipped with machinery for the manufacture of the starters,

Now, Therefore, for and in consideration of the sum of One Dollar ($1.00) paid by each of the parties to the other, receipt of which is hereby acknowledged, and in further consideration of Breeze experimenting, developing and equipping for the production of starters, parts and accessories and of the faithful performance of the covenants and conditions hereinafter recited, the parties hereto have agreed as follows:

First. Federal hereby employs Breeze to manufacture for them all cartridge starters and accessories on the basis of cost plus ten per cent (10%).

Second. Federal hereby appoints Breeze as exclusive sales agent and distributor for Coffman starters, accessories and cartridges and agrees to pay them a commission of twenty-five per cent (25%) from the sales price of all starters, parts and cartridges.

Third. Federal hereby agrees that Breeze may, in its [fol. 184] discretion, manufacture and sell starters, parts and cartridges at a price less than the amount determined by the use of the formula specified herein when, in their opinion, prevailing conditions necessitate a reduction in price.

Fourth. Federal hereby agrees that Breeze do all accounting and keep all records; said records to be available to Federal for inspection at reasonable times.

Fifth. Breeze hereby accepts said exclusive manufacturing and sales arrangement and agrees to diligently and aggressively promote the sale of said starters and cartridges and to maintain a force sufficient to service the customers in the use of said equipment.

Sixth. Breeze hereby agrees, on all sales made by them, to include in the sales price a sum for the royalty Federal is required to pay to Coffman. Breeze will pay the amount of these royalties to Federal who will remit to Coffman.

Seventh. Breeze hereby agrees to manufacture said starters as ordered by Federal for shipment without the United States under the terms and conditions hereby agreed upon and bill Federal on the basis of cost plus ten per cent (10%) plus twenty-five per cent (25%) so that Federal may add to the amount of this invoice any additional charges they may contractually be permitted or desire to do.

Eighth. This Agreement is to continue until cancelled by mutual consent upon thirty days notice to each other.

Federal Laboratories, Inc., Robert B. Reynolds, President; Breeze Corporations, Inc., J. J. Mascuch, President.

Attest: Harry E. Rau, Secretary.
Attest: John T. Mascuch, Secretary.
Service of copy of within Answer hereby accepted this 8th day of August, 1944.

Smith, Buchanan & Ingersoll, Attorneys for Plaintiff; Charles F. Uhl, Attorney for United States—Intervenor.

[Endorsed:] District Court of the United States for the Western District of Pennsylvania. Civil Action No. 3046. Roscoe A. Coffman, Plaintiff, v. Federal Laboratories, Inc., a Corporation of the State of Delaware, and Breeze Corporations, Inc., a Corporation of the State of New Jersey, Defendants. Answer of Federal Laboratories, Inc. Filed Aug. 8, 1944. G. H. Berger, Clerk. Seif, Evashwick & Best, Attorneys at Law, Suite 1145 Berger Building, Pittsburgh, Pa. Grant 3367-3368.

[fol. 185] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 3046

ROSCOE A. COFFMAN, Plaintiff,

vs.

FEDERAL LABORATORIES, INC., a Corporation of the State of Delaware, and Breeze Corporation, Inc., a Corporation of the State of New Jersey, Defendants;

THE UNITED STATES OF AMERICA, INTERVENOR

Before Jones, Circuit Judge and Gibson and Schoonmaker, District Judges

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER AND DISMISSING PARTS OF COMPLAINT

And now, to wit, August 1st, 1944, the Court being of the opinion that the instant case is not to be distinguished from the case of Roscoe A. Coffman vs. Federal Laboratories, Inc., and Breeze Corporation, Inc., United States of America Intervenor, Civil action No. 3289 in the District Court

of the United States for the District of New Jersey in that the controversy of the private parties to the action fails competently to raise a presently justiciable question as to the constitutionality of the Royalty Adjustment Act of October 31, 1942, (U. S. C. A. Secs. 89-96) or the validity of the Royalty Adjustment orders (W-9 and N-7) issued in pursuance of said Act, and the Court being of the further opinion that the decision of the United States District Court for the District of New Jersey in the case above referred to correctly indicates the appropriate disposition to be made of the motions now pending before this Court in the above-entitled matter.

Now, therefore, it is hereby ordered and directed that the Temporary Restraining Order heretofore issued on June 14, 1944, be and the same is hereby dissolved and terminated, that the plaintiff's motion for an injunction be and the same is hereby denied, and that, on motion of the United States of America, paragraphs 24, 25, 26, 27, 28, 29, 30 and 32 and sub-paragraphs (3) and (4) of plaintiff's prayers for relief be and the same are hereby dismissed as not being relevant to the issues in controversy between the private parties to the action.

[fol. 186]

By the Court, Charles Alvin Jones, United States Circuit Judge; R. M. Gibson, United States District Judge; F. P. Schoonmaker, United States District Judge.

[fols. 187-190] In United States District Court

[Title omitted]

Order Allowing Appeal

Plaintiff, Roscoe A. Coffman, having filed his petition for an appeal to the Supreme Court of the United States pursuant to the provisions of the Act of August 24, 1937, and having filed his bond with sufficient surety thereon in the sum of Two Hundred and Fifty Dollars ($250), approved as to form and sufficiency, and having also filed his assignments of error and statement of jurisdiction,

Now, Therefore, it is on this 29th day of August, 1944, Ordered that the plaintiff's appeal be and the same is

hereby allowed to the Supreme Court of the United States from the order of this court dated August 1, 1944, denying plaintiff an injunction as prayed for in his complaint.

R. M. Gibson, U. S. D. J.

[fol. 191] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENTS OF ERROR

Now comes the above named appellant, Roscoe A. Coffman, by John G. Buchanan and James D. Carpenter, Jr., his attorneys, and says that in the record and proceedings in the above entitled matter there is manifest error in this, to wit:

I

The District Court of the United States for the Western District of Pennsylvania erred in denying appellant an injunction restraining defendant Federal Laboratories, Inc. from in any way complying with the terms of Royalty Adjustment Orders designated as Nos. W-9 and N-7, and especially from paying over to the Treasurer of the United States any royalties that were due plaintiff on the date said orders were issued (in excess of $50,000. per annum), and further from paying to the Treasurer of the United States such royalties as have accrued and are continuing to accrue to plaintiff from and after the date of said orders (in excess of $50,000 per annum).

II

The District Court erred in holding that there was not raised a presently justiciable question as to the constitutionality of the Royalty Adjustment Act of October 31, 1942 (35 U. S. C. A. Secs. 89-96) or the validity of the Royalty [fols. 192-199] Adjustment Orders (W-9 and N-7) issued in pursuance of said act.

III

The District Court erred in granting the motion of the United States as intervenor and in striking out paragraphs 24, 25, 26, 27, 28, 29, 30 and 32 and subparagraphs (3) and (4) of plaintiff's prayers for relief.

IV

The said District Court erred in failing to hold that Royalty Adjustment Orders Nos. W-9 and N-7 were not legally justified by the Royalty Adjustment Act above mentioned.

V

The District Court erred in failing to hold that Royalty Adjustment Act aforesaid and Royalty Adjustment Orders Nos. W-9 and N-7 violate the Fifth Amendment to the Constitution of the United States.

Wherefore appellant Roscoe A. Coffman prays that the Order of the District Court of the United States for the Western District of Pennsylvania appealed from herein be reversed and the injunction as prayed for in plaintiff's complaint may be ordered granted.

John G. Buchanan, James D. Carpenter, Jr., Attorneys for Appellant.

[fol. 200] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY, and DESIGNATION OF PARTS OF THE RECORD BELIEVED TO BE NECESSARY FOR THE CONSIDERATION THEREOF—Filed September 28, 1944.

Appellant Roscoe A. Coffman intends to rely on the following points on the appeal in this case:

I

The District Court of the United States for the Western District of Pennsylvania erred in denying appellant an injunction restraining defendant Federal Laboratories, Inc. from in any way complying with the terms of Royalty Adjustment Orders designated as Nos. W-9 and N-7, and especially from paying over to the Treasurer of the United States any royalties that were due plaintiff on the date said orders were issued (in excess of $50,000 per annum), and further from paying to the Treasurer of the United States such royalties as have accrued and are continuing to accrue to plaintiff from and after the date of said orders (in excess of $50,000 per annum).

II

The District Court erred in holding that in the controversy between private parties in the action in the court below, there was not properly raised a presently justiciable controversy as to the constitutionality of the Royalty Adjustment Act of 1942 or the validity of the Royalty Adjustment Orders issued in pursuance of said Act.

[fol. 201]

III

The said Royalty Adjustment Orders Nos. W-9 and N-7 made in attempted compliance with the Royalty Adjustment Act, violate the Fifth Amendment in that they take plaintiff's property for public use without just compensation.

IV

Said Royalty Adjustment Orders Nos. W-9 and N-7 are void in that they take plaintiff's property without due process of law in violation of the Fifth Amendment.

V

Said Royalty Adjustment Orders Nos. W-9 and N-7 are void in that they are not justified by the terms and provisions of the Royalty Adjustment Act, 56 Stat. 1015.

VI

Said Royalty Adjustment Orders Nos. W-9 and N-7 made in attempted compliance with the terms and provisions of the Royalty Adjustment Act aforesaid, are null and void for the following reasons:

(a) They operated to condemn or confiscate moneys due and owing to the plaintiff by the defendant prior to the giving of any notice to the plaintiff, pursuant to the provisions of the Royalty Adjustment Act aforesaid.

(b) They condemned or confiscated moneys due and owing to the plaintiff prior to the issuance of said orders.

(c) They condemn or confiscate moneys accruing to the plaintiff from and after the date of said orders under the terms of the contract between plaintiff and defendant, made and executed December 8, 1932.

(d) They violate Article I, Section 8 of the Constitution, in that they attempt to collect duties, imposts or excises [fol. 202] which are not uniform throughout the United States.

(e) They violate Article I, Section 9 of the Constitution, in that they attempt to lay a capitation or other direct tax not in proportion to the census.

VII

The Royalty Adjustment Act of 1942 is unconstitutional and null and void for the following reasons:

(a) It operates to take plaintiff's property in his contract of December 8, 1932 without just compensation and without due process of law in violation of the Fifth Amendment.

(b) It operates as a duty, impost or excise which is not uniform throughout the United States in violation of Article I, Section 8 of the Constitution.

(c) It operates as a capitation or other direct tax not made in proportion to the census in violation of Article I, Section 9 of the Constitution.

(d) It operates to deprive plaintiff of his right to sue the defendant under the terms of his contract of December 8, 1932 for royalties due and accruing to him in violation of the Fifth Amendment.

(e) The sole right given the plaintiff in Section 2 of said Act to sue the United States in the Court of Claims for just compensation in which "suit the United States may avail itself of any and all defenses general or special, that might be pleaded by a defendant in an action for infringement," is not a fair substitute for specific royalties payable quarter-annually reserved in plaintiff's license agreement aforesaid wherein the validity of plaintiff's patents is conceded.

[fol. 203] VIII

Said Act is not a valid exercise of the power of eminent domain in that moneys due and owing a citizen under the Federal Constitution may be taken only by the exercise of the taxing power in the manner and by the means specified by the Constitution.

Appellant hereby designates the following parts of the record which he thinks necessary for the consideration of this appeal:

1. Plaintiff's complaint in the District Court, with all exhibits attached.

2. Order of June 14, 1944 granting temporary restraining order.

3. Response to Certification of June 14, 1944 and Motion of United States for leave to intervene (2 pages).

4. Motion of Intervenor to effect temporary restraining order and to dismiss complaint in part (3 pages, without exhibits or appendices attached).

5. Order granting motion of United States for leave to intervene.

6. Order continuing temporary restraining order.

7. Answer of Federal Laboratories, Inc.

8. Order of August 1, 1944 dissolving injunction, denying plaintiff an injunction, and striking out parts of the complaint.

9. Order allowing appeal.

10. Assignments of Error.

11. Statement of Jurisdiction.

Respectfully submitted, John G. Buchanan, William [fols. 204-209] H. Eckert, Union Trust Building, Pittsburgh 19, Pa., James D. Carpenter, Jr., 75 Montgomery Street, Jersey City 2, N. J., Attorneys for Appellant.

[fol. 210] [File endorsement omitted]

[fol. 211] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION—October 16, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court in this

case is postponed to the hearing of the case on the merits. The motion advance is granted and the case is transferred to the summary docket and assigned for argument immediately following No. 71 which is also transferred to the summary docket.

Endorsed on cover: File No. 48,938 D. C. U. S., Western Pennsylvania, Term No. 485. Roscoe A. Coffman, Appellant, vs. Federal Laboratories, Inc., and The United States of America. Filed September 20, 1944. Term No. 485 O. T. 1944.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 485

ROSCOE A. COFFMAN

Appellant,

vs.

FEDERAL LABORATORIES, INC., AND THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STATEMENT AS TO JURISDICTION

James D. Carpenter, Jr.,
John G. Buchanan,
William H. Eckert,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 485

ROSCOE A. COFFMAN,

Plaintiff-Appellant,

vs.

FEDERAL LABORATORIES, INC., A CORPORATION OF THE STATE OF DELAWARE,

Defendant-Appellee;

UNITED STATES OF AMERICA,

Intervenor

STATEMENT OF JURISDICTION

The basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the order entered in the District Court of the United States for the Western District of Pennsylvania on August 1, 1944, is as follows:

I

The statute believed to sustain the jurisdiction of this Court is the Act of Congress of April 24, 1937, U. S. C. Tit. 28, Sec. 380(a).

II

The statute of the United States the validity of which is involved, is the Royalty Adjustment Act of 1942, 56 Stat.

1015, U. S. C. Tit. 35, Secs. 89, 96, approved October 31, 1942.

The pertinent provisions of this statute are as follows:

The title is: "An Act to provide for adjusting royalties for the use of inventions for the benefit of the United States, in aid of the prosecution of the War, and for other purposes."

Section 1 of the Act provides that whenever an invention, whether patented or unpatented, shall be manufactured, used, sold, or otherwise disposed of for the United States, with license from the owner thereof, and such license includes provisions for the payment of royalties "the rates or amounts of which are believed to be unreasonable or excessive by the head of the department or agency of the Government which has ordered such manufacture, use, sale, or other disposition, the head of the department or agency of the Government concerned shall give written notice of such fact to the licensor and to the licensee, within a reasonable time after the effective date of said notice, in no event less than ten days. The head of the department or agency of the Government concerned, shall by order fix and specify such rates or amounts of royalties, if any, as he shall determine to be fair and just, taking into account the conditions of wartime production, and shall authorize the payment thereof by the licensee to the licensor on account of such manufacture" etc. Provided, however, that the licensee or licensor, if he so requests within ten days after the effective date of said notice, may within thirty days from the date of such request, present in writing or in person any facts or circumstances which may in his opinion have a bearing upon the rates or amounts of royalties if any to be determined, fixed and specified, "and any order fixing and specifying the rates and amounts of royalties shall be issued within a

reasonable time after such presentation. Such licensee shall not after the effective date of said notice pay to the licensor, nor charge directly or indirectly to the United States, a royalty, if any, in excess of that specified in said order on account of such manufacture, use, sale, or other disposition. The licensor shall not have any remedy by way of suit, set-off or other legal action against the licensee for the payment of any additional royalty remaining unpaid, or damages for breach of contract or otherwise, but such licensor's sole and exclusive remedy, except as to the recovery of royalties fixed in said order, shall be as provided in Section 2." Section 2 provides that any licensor aggrieved by any order fixing and specifying the maximum rates or amounts of royalties under a license issued by him may institute suit against the United States in the Court of Claims, or in the District Courts of the United States insofar as such courts may have concurrent jurisdiction with the Court of Claims to recover such sum, if any, as when added to the royalties fixed and specified in such order shall constitute fair and just compensation to the licensor for the manufacture, use, or other disposition of the licensed invention for the United States, taking into account the conditions of wartime production. In any such suit the United States may avail itself of any and all defenses, general or special, that might be pleaded by a defendant in an action for infringement as set forth in Title 60 of the Revised Statutes, or otherwise.

Section 3 gives the head of any department or agency of the Government power to enter into an agreement of compromise with the licensor of such invention for past or future compensation to the owner or licensor.

Section 4 provides that whenever a reduction in the rates or amounts of royalties is effected by order pursuant to Section 1, or by compromise pursuant to Section 3, such

reduction shall inure to the benefit of the Government by way of a corresponding reduction in the contract price to be paid for such manufacture of such invention or by way of refund if already paid the licensee.

Section 5 provides that the head of the department or agency may delegate any power or authority conferred by this Act to such persons as he may designate or appoint.

Section 6 provides that for the purposes of this Act the manufacture, use, or sale of an invention, whether patented or unpatented, by a contractor, sub-contractor, or any person, firm or corporation for the Government, and with the authorization of the Government, shall be construed as manufacture, use or sale for the United States, and for the purposes of the Act of June 25, 1910, as amended (40 Stat. 705, 35 U. S. C. 68), the use or manufacture of an invention covered by a patent by a contractor, sub-contractor, or any person for the Government, and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States.

Section 7. This Act shall apply to all royalties directly or indirectly chargeable to the United States for any supplies, equipment or materials. Sections 1 and 2 shall remain in force only during the continuance of the present War and for six months thereafter, "except that as to rates accrued or liabilities incurred prior to the termination thereof, the provisions of this act shall be treated as remaining in force and effect for the purpose of settling, sustaining, qualifying, or defeating any suit or claim hereunder."

Section 8. The head of each department or agency of the Government may issue such rules and regulations and require such information as may be necessary and proper to carry out the provisions of this Act.

III

The order or judgment sought to be reviewed was entered August 1, 1944, and the application for appeal was presented within due time, to wit: August 29, 1944.

IV

Nature of the Case

(a) The plaintiff Coffman is the sole owner of Letters Patent relative to improvements in starting motors, for internal combustion engines and shells for use therewith. The starters are necessary and are used on a very large percentage of aircraft being used by the United States and its Allies. The starters are set in motion by the explosion of cartridges, or shells, likewise covered by plaintiff's patents, the motor being started not by an explosion resulting from the discharges of said cartridges or shells but by the control of the gases generated from the burning of the charge contained in the shells controlled in the manner and method described in the patents.

(b) On December 8, 1932, plaintiff executed and delivered an exclusive license agreement to defendant Federal Laboratories, Inc., to make, use and sell the starters and shells embodying plaintiff's inventions, the licensee agreeing to pay plaintiff a license fee or royalty of 6% of the net selling price of the starters, parts and shells.

(c) The amounts of royalties due and owing to plaintiff are in dispute, but defendant Federal Laboratories, Inc. in its answer filed in this cause admits that there is a balance due and owing plaintiff of $180,230.44 (defendant's answer par. 34), of which $141,680.08 is admitted to be due plaintiff for 1943.

(d) On June 14, 1944, plaintiff filed Civil Action No. 3046 in the District Court of the United States for the Western District of Pennsylvania for an accounting against Federal Laboratories, Inc. and Breeze Corporations, Inc. of royalties due plaintiff under his agreement of December 8, 1932, and also for an account of other moneys due plaintiff and alleged to have been withheld from him through fraudulent concealment of the consideration received by the licensee and Breeze Corporations, Inc. on the sale of manufacturing rights under the Coffman Patents to an English Company. Plaintiff in Count 3 demanded a money judgment against the defendant alleging there was due him from defendant $371,625.96 and interest, as by reference to the complaint will fully appear.

(e) On February 24, 1943, notice was given plaintiff by the Navy Department, and on March 3, 1943, by the War Department, that the royalties reserved to him under his agreement of December 8, 1932, were believed to be unreasonable and excessive.

(f) On December 18, 1943, the War Department issued its Royalty Adjustment Order No. W-9, and on December 23, 1943, the Navy Department issued its Royalty Adjustment Order No. N-7, copies of which are annexed to the complaint, which allegedly, under the terms of the Royalty Adjustment Act aforesaid, determined that:

> "(1) Fair and just rates and amounts of royalties for the manufacture, use, sale or other disposition of said alleged inventions are hereby determined, fixed and specified to be as follows:
>
> (a) Upon each starter sold to or for either the War Department or the Navy Department, the sum of Eight ($8) Dollars each, and
>
> (b) Upon parts and cartridges sold to or for either the War Department or the Navy Department, no royalties;

but not to exceed the sum of Fifty Thousand and ($50,000) Dollars to be paid to Licensor in each calendar year commencing January 1, 1943 in respect of starters sold to or for the War Department and the Navy Department, added together.

(2) Until further Order, Licensee is hereby authorized to pay to Licensor, * * * not to exceed the amount determined, fixed and specified in paragraph (1) hereof, and no more, under

(a) the above mentioned license agreement dated December 8, 1932, * * *

(3) Licensee is hereby directed to pay over to the Treasurer of the United States, through Commanding General, Army Air Forces Materiel Command, attention, Royalty Adjustment Board, Wright Field, Dayton, Ohio, the balance, in excess of the payments authorized by paragraph (2) hereof, of all royalties specified in the licenses or arrangements referred to in paragraph (2) hereof which were due to Licensor and were unpaid on the effective date of said notice, or since said date have or may hereafter become due to Licensor on account of any manufacture, use, sale or other disposition of said inventions for the War Department or the Navy Department, heretofore occurred or hereafter occurring while Sections 1 and 2 of said Act remain in force; and demand is hereby made for payment forthwith of so much of said balance as is now due to Licensor."

(g) In his verified complaint filed in the court below plaintiff alleged the issuance of said Royalty Adjustment Orders. Plaintiff alleged that neither Federal Laboratories, Inc. nor Breeze Corporations, Inc. have made payment to plaintiff of the $50,000.00 mentioned in Royalty Adjustment Orders Nos. W-9 and N-7, nor have either of said defendants made payment of any part of the balance due plaintiff to the Treasurer of the United States or anyone else, pursuant to paragraph (3) of the Royalty Adjustment

Orders. The complaint also set forth the action heretofore filed by plaintiff in the United States District Court for the District of New Jersey, and the pendency before this Court of an appeal from the order dismissing plaintiff's complaint. (The appeal in this Court is pending under number 71, October Term 1944.)

(h) Plaintiff alleged in his complaint that the Act of Congress known as the Royalty Adjustment Act, P. L. 768 (77th Congress, Chapter 634, Second Session) is null and void, and that the said Royalty Adjustment Orders made in pretended compliance with said statute are likewise null and void, for the following reasons:

(1) As taking plaintiff's property for public use without just compensation and depriving plaintiff of his property without due process of law in violation of the Fifth Amendment;

(2) That said Act of Congress and said Royalty Adjustment Orders operate to take plaintiff's property in his patents and in his license agreement for public use without just compensation;

(3) That said Act of Congress attempts to deprive plaintiff of all remedy by suit or otherwise against his licensees for payment of the royalties reserved in his license agreement, wherein the validity of plaintiff's patents is conceded, and relegates plaintiff to an action against the United States in the Court of Claims to recover such sum, if any, as when added to the royalties fixed and specified in said Orders, "shall constitute fair and just compensation to the licensor" for the use of the invention, "and in which such suit the United States may avail itself of any and all defenses, general and special, that might be pleaded by a defendant an action for infringement," and which defenses would not be open or available to the licensees;

(4) That the statute and orders deprive plaintiff of his limited patent monopoly without just compensation, within the meaning of the Fifth Amendment;

(5) That the right of action attempted to be accorded plaintiff by a suit in the Court of Claims does not and cannot give plaintiff just compensation for his rights in said patents and his rights in his royalty agreement;

(6) That said Act of Congress and said orders operate to deprive plaintiff of royalties earned under said license agreement prior to December 18, 1943, in excess of $250,000.00, for an award of $50,000.00 royalties;

(7) Said statute and orders are invalid in that they deprive plaintiff of all royalties reserved under said license agreement for parts manufactured and sold under said patents, and for shells and cartridges covered by plaintiff's patents and manufactured and sold by defendants;

(8) Said statute and orders operate to deny plaintiff his rights to an accounting in the action pending in the District Court for the Western District of Pennsylvania, and the rights to recover therein for any and all royalties due plaintiff for 1943 and thereafter;

(9) Said Act of Congress violates Article I, Section I and Section 8 of the Constitution, in that it is an unconstitutional delegation of legislative power setting up no standards for the guidance of agencies of the Government, and drawing no distinction between the manufacture of articles, whether patented or unpatented, and whether they are manufactured under a valid license or manufactured under a patent where no license has been granted.

(i) Plaintiff prayed:

(1) For judgment for all royalties due him from defendants.

(2) That a temporary and final injunction issue enjoining and restraining Federal Laboratories, Inc. and Breeze Corporations, Inc. from complying with the Royalty Adjustment Orders aforesaid and from paying any of the royalties due and to grow due to plaintiff under said license agreement to the Treasurer of the United States pursuant to the command of the Royalty Adjustment Orders.

(3) That a special three-judge court be convened as provided by U. S. C. Title 28, Sec. 380(a).

(4) That plaintiff's royalty agreement be decreed to be terminated because of its breach by defendants.

(j) Upon the filing of plaintiff's verified complaint with exhibits attached, District Judge Gibson issued a temporary restraining order, and in compliance with the Act of Congress of August 24, 1937, U. S. C. Tit. 28, Section 380(a), a special court was summonded and notice was duly given the Attorney General. The temporary restraining order was served before any of plaintiff's royalties were paid to the Treasurer of the United States.

(k) The cause duly came on for hearing before the Special Court on July 18, 1944; the United States meanwhile having moved to intervene and become a party to the cause, and moving to strike certain paragraphs of the complaint.

(l) An August 1, 1944 the Special Court filed its order, a copy of which is annexed, denying plaintiff an injunction as prayed for in his complaint, dissolving and terminating the temporary injunction and striking out portions of plaintiff's complaint.

V

The cases believed to sustain the jurisdiction of the court are:

Dodge v. *Woolsey*, 59 U. S. 331;
Pollock v. *Farmers Loan & Trust Co.*, 157 U. S. 429;
Aetna Life Insurance Co. v. *Haworth*, 300 U. S. 239, 240;
City Bank v. *Schnader*, 291 U. S. 24;
Vicksburg Waterworks Co. v. *Vicksburg*, 185 U. S. 65;
Carter v. *Carter Coal Co.*, 298 U. S. 238, wherein the court quoting from the decision in *Pennsylvania* v. *West Virginia*, 256 U. S. 553, said:

"One does not have to wait the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough."

Pierce v. *Society of Sisters*, 268 U. S. 510, 535, 536;
Euclid v. *Ambler Realty Co.*, 272 U. S. 365;
Swift v. *United States*, 276 U. S. 311, 326;
Marconi Wireless Tel. Co. v. *Simon*, 246 U. S. 46;
Cramp & Sons v. *International Curtis Marine Turbine Co.*, 246 U. S. 28;
Clark v. *Poor*, 274 U. S. 554

VI

How the Court Below Abused Its Discretion

The court below should have issued its injunction as prayed for because:

(a) It cannot be said there was no justiciable controversy because an injunction was sought to restrain the defendant from paying plaintiff's royalties, due him for 1943 under his contract of December 8, 1932, to the Treasurer of the United States pursuant to the command of the Royalty Ad-

justment Orders Nos. W-9 and N-7. The injunction was served before any of plaintiff's royalties for 1943 were paid over, and it caught the money in the hands of plaintiff's debtor.

Prior to the service of the notices under the statute on February 24 and March 3, 1943, a substantial part of plaintiff's royalties were being paid him under the terms of his contract of December 8, 1932 (Complaint, par. 22). Service of such notices terminated all payments to plaintiff. The Royalty Adjustment Orders threatened to destroy his vested rights under his contract made in 1932.

If plaintiff may not restrain his debtor from complying with the Royalty Adjustment Orders and paying his money to the Treasurer of the United States, he certainly will be met with the defense of payment on the trial of the action below to recover his royalties if his royalties are paid to the Treasurer of the United States. If the Royalty Adjustment Act is valid plaintiff may not even sue at law for any royalties due him in excess of $50,000 in any year after January 1, 1943, and until six months after the war.

Why should plaintiff be compelled to await the complete destruction of his rights, when the legality of the threatened injury can be speedily and effectively determined in this action in equity?

The Royalty Adjustment Act of 1942 under which Orders Nos. W-9 and N-7 were issued is obviously void. It contains not a single standard for the guidance of the "purchasing agency" which believes the price charged is too great because of royalties payable to inventors.

It is not an act of Eminent Domain, for the taking is only of accounts receivable, or money due inventors, and they are not compensated by being given the value of what is taken, but something far less, i.e. an arbitrary amount intended to be far less than the value of that which is taken.

The sole right to sue in the Court of Claims is to recover not what plaintiff's contract gave him (with the validity of his patents conceded) but unliquidated and uncertain compensation for the use made of plaintiff's patents subject to any and all defenses that agile minds can conjure up.

The Royalty Adjustment Orders destroyed vested rights of the plaintiff in both his patents and his contract of December 8, 1932.

Moreover, under the Constitution money due a citizen can only be taken under the taxing power and the Royalty Adjustment Act is a tax act is invalid under Article I, Sections 8 and 9.

JOHN G. BUCHANAN,
WILLIAM H. ECKERT,
JAMES D. CARPENTER, JR.,
Of Counsel with Plaintiff-Appellant.

APPENDIX "A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 3046

ROSCOE A. COFFMAN, *Plaintiff*,

vs.

FEDERAL LABORATORIES, INC., a Corporation of the State of Delaware, and BREEZE CORPORATION, INC., a Corporation of the State of New Jersey, *Defendants*,

THE UNITED STATES OF AMERICA, *Intervenor*.

Before Jones, Circuit Judge and Gibson and Schoonmaker, District Judges.

ORDER.

And now, to wit, August 1st, 1944, the Court being of the opinion that the instant case is not to be distinguished from the case of Roscoe A. Coffman *vs.* Federal Laboratories, Inc., and Breeze Corporation, Inc.; United States of America Intervenor, Civil action No. 3289 in the District Court of the United States for the District of New Jersey in that the controversy of the private parties to the action fails competently to raise a presently justiciable question as to the constitutionality of the Royalty Adjustment Act of October 31, 1942 (U. S. C. A. Secs. 89-96), or the validity of the Royalty Adjustment orders (W-9 and N-7) issued in pursuance of said Act, and the Court being of the further opinion that the decision of the United States District Court for the District of New Jersey in the case above referred to correctly indicates the appropriate disposition to be made of the motions now pending before this Court in the above-entitled matter.

Now, therefore, it is hereby ordered and directed that the temporary Restraining Order heretofore issued on June 14, 1944, be and the same is hereby dissolved and terminated, that the plaintiff's motion for an injunction be and the

same is hereby denied, and that, on motion of the United States of America, paragraphs 24, 25, 26, 27, 28, 29, 30 and 32 and sub-paragraphs (3) and (4) of plaintiff's prayers for relief be and the same are hereby dismissed as not being relevant to the issues in controversy between the private parties to the action.

By the Court.

CHARLES ALVIN JONES,
United States Circuit Judge;
R. M. GIBSON,
United States District Judge;
F. P. SCHOONMAKER,
United States District Judge.

(4083)

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IN THE

Supreme Court of the United States

No. 485—October Term, 1944.

Roscoe A. Coffman,

Appellant,

vs.

Federal Laboratories, Inc.,
a corporation,

Appellee,

United States of America,

Intervenor.

MOTION UNDER RULE 20, PARAGRAPH 8.

Now comes the appellant, Roscoe A. Coffman, and moves that the above entitled cause be heard with cause No. 71, October Term, 1944, entitled "Roscoe A. Coffman, appellant, *vs.* Breeze Corporations, Inc., appellee, and the United States of America, Intervenor." This motion is made because both cases involve the same question, i.e., the constitutional validity of the same two Royalty Adjustment Orders, namely: W-9 and N-7, and the constitutionality of the Royalty Adjustment Act of 1942, 56 Stat. 1013-1015; 35 USCA 89-96.

The record in case No. 71, October Term, 1944, was filed April 28, 1944, and is an appeal from the District Court of the United States for the District of New Jersey.

This cause was docketed September 20, 1944, and is an appeal from the District Court of the United States for the Western District of Pennsylvania.

The record in case No. 71 has been printed and served. It is anticipated that the record in case No. 485 cannot in due course be printed and served under about thirty days from this date.

Dated September 25, 1944.

Respectfully submitted,

JAMES D. CARPENTER, JR.,
JOHN G. BUCHANAN,
WILLIAM H. ECKERT,
of Counsel with Appellant.

SUPREME COURT OF THE UNITED STATES.

No. 485.—October Term, 1944.

Roscoe A. Coffman, Appellant, *vs.* Federal Laboratories, Inc., and the United States of America.	Appeal from the District Court of the United States for the Western District of Pennsylvania.

[January 2, 1945.]

Mr. Chief Justice Stone delivered the opinion of the Court.

This is a companion case to No. 71, *Coffman* v. *Breeze Corporations, Inc. and the United States*, decided this day.

Like that case the present suit was brought by appellant against Federal Laboratories, Inc. and Breeze Corporations, Inc. to secure among other things an adjudication of the constitutional validity of the Royalty Adjustment Act of Congress of October 31, 1942, 56 Stat. 1013, 35 U. S. C. Supp. III, §§ 89-96. It sought also to enjoin defendants from paying over to the Treasury of the United States royalties alleged to be due upon the license agreements involved in the Breeze suit, as required by the notices and orders of the War and Navy Departments served upon appellant and the defendants pursuant to the Act.

In addition, the bill of complaint alleges that defendants owe royalties to appellant under the license agreements, for which it prays an accounting. By way of anticipation of the defense that the Royalty Adjustment Act and the notices and orders of the War and Navy Departments require appellee to pay the royalties into the Treasury, appellant sets up the unconstitutionality of the Act.

A district court of three judges was convened to hear the cause as required by the Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. § 380(a), and the United States was allowed to intervene as a party in accordance with § 1 of the Act. 50 Stat. 751, 28 U. S. C. § 401. The District Court, on motion of the Government, dismissed so much of the bill of complaint as sought an adjudication of the constitutional validity of the Royalty Adjustment Act and of the notice and orders issued under it. It struck

from the bill of complaint the anticipatory allegations that the Royalty Adjustment Act and the orders with respect to the royalties owing appellant are unconstitutional and void, and it struck the prayer of the bill for an injunction.

For the reasons stated in our opinion in the Breeze case we hold that appellant has shown no ground for equitable relief by way of injunction. The allegations of unconstitutionality of the Royalty Adjustment Act and the orders were pleaded only as supporting the prayer for an injunction and were therefore properly stricken with that prayer. The allegations are not essential to or a proper part of the cause of action for an accounting and recovery of the royalties alleged to be due.

Since the allegations were stricken, appellee Federal has answered setting up as a separate defense the royalty adjustment orders prohibiting payment of the royalties to appellant. Upon that issue appellant will be free to contest the constitutional validity of the orders. The judgment below is accordingly

Affirmed.